

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BETTY ANN MARSEE,)
Administratrix of the Estate)
of MARVIN SEAN MARSEE,)
Deceased,)

Plaintiff,)

vs.)

No. Civ-84-2777R

UNITED STATES TOBACCO CO.,)
a New Jersey corporation,)
Defendant.)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
Monday, June 9, 1986

A p p e a r a n c e s:

HON. DAVID L. RUSSELL,
U.S. District Judge, Presiding

GEORGE W. BRALY, Esquire
DANIA DESCHAMPS-BRALY, Esquire
Braly & Braly
217 North Mississippi
Ada, Oklahoma 74820
Appeared for Plaintiff.

TIMOTHY M. FINNEGAN, Esquire
Jacob, Medinger & Finnegan
1270 Avenue of the Americas
Rockefeller Center
New York, N.Y. 10020

and

ALSTON JENNINGS, Esquire
Wright, Lindsay & Jennings
2200 Worthen Bank Building
Little Rock, Arkansas 72201

and

ANDY COATS, Esquire
Crowe & Dunlevy
1800 Mid-America Tower
Oklahoma City, OK 73102
Appeared for Defendant.

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MAYNARD PETERSON & ASSOCIATES
Certified Shorthand Reporters

Oklahoma City,
Oklahoma 73102

1466-E First National Center
(405) 232-9909

DEPOSITION SUITE AVAILABLE

1
2 Maynard E. Peterson, CSR
3 Acting Official Reporter
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5 BE IT REMEMBERED, that on the 9th day of
6 June, 1986, the above matter coming on for jury trial
7 before the Honorable David L. Russell, United States
8 District Judge for the Western District of Oklahoma,
9 and the parties appearing in person and or by counsel
10 as hereinabove set forth, the following proceedings
11 were had:
12

13 MORNING SESSION

14 Monday, June 9, 1986

15 THE COURT: Be seated.

16 A couple of things, ladies and gentlemen.

17 First, as you know, we had discussions
18 yesterday about the jury and the 60 Minutes program.
19 I considered it and I had never seen the program, but
20 I was concerned from both parties' standpoint that a
21 juror might inadvertently see that. I am satisfied
22 they wouldn't do it intentionally, so I had my law
23 clerk call each of the jurors and advise them of the
24 fact that it was going to be shown at 6 o'clock and
25 to avoid watching it and to avoid talking to anyone

1 who did.

2 I will read into the record, I just had my
3 law clerk read the following statement to each of the
4 jurors. It is: "The 60 minutes Show tomorrow is
5 showing the segment on the Marsee case. I want to
6 alert you so you will avoid watching the program. I
7 know you are quite aware of the order to not read or
8 listen to anything about the case. However, I was
9 afraid you might inadvertently watch this program,
10 so do not watch the program and don't discuss it with
11 anyone who does. The Court, as well as the parties,
12 appreciate your cooperation."

13 We were able to get ahold of eight of the
14 nine jurors. Mrs. Joyce Herron we were not able to
15 get ahold of. I will inquire of her this morning if
16 she happened to watch or discuss the case. All the
17 jurors obviously were very willing to cooperate.

18 Next is --

19 MR. JENNINGS: Excuse me, Your Honor.

20 THE COURT: Yes, sir.

21 MR. JENNINGS: May I make a request of the
22 Court that he not inquire of --

23 THE COURT: If you don't want me to, I
24 won't.

25 MR. JENNINGS: I don't want you to, because

1 I think that if Ms. Herron had seen the show or any
2 part of it by accident that she would volunteer that
3 to the Court.

4 THE COURT: Well, I will do that on one
5 condition. I don't want -- I agree that she probably
6 would, but I don't want a week after the trial if for
7 some reason we find out she listened to that and
8 she's a regular member of the jury for that to be a
9 basis of a new trial, the fact that she watched it
10 and, see, we could replace her right now if she
11 indeed watched it.

12 And the reason I am mentioning this, I had
13 this same thing happen in the last month in a
14 criminal case. A juror didn't mention to us the fact
15 that an outside party had discussed the case with
16 him. He thought it was not important, because I
17 disregarded it, and it is a very serious matter now
18 in the case, because things were brought to his
19 attention that were adverse to the defendant in that
20 case. So I am inclined to ask, because I surely
21 don't want her to have a sudden memory a week after
22 the trial. I will leave it up to you.

23 MR. JENNINGS: If the Court please, I feel
24 that singling her out and asking only her --

25 THE COURT: How about this? What if I just

1 ask all of them as a group, say, "We called you, and
2 I just want to make a record to make sure no one
3 watched any of the program." How would you feel
4 about that?

5 MR. JENNINGS: I would prefer that to
6 singling her out.

7 THE COURT: All right. I really think we
8 ought to do something, because I don't want a
9 mistrial. I know both sides don't either.

10 Now, I also had my law clerk call each of
11 you in regard to the Bantle deposition. Let me make
12 a record as to what my rulings were. I will just go
13 over the defendant's supplemental memorandum of
14 objections which were filed June the 6th.

15 The first is in regard to the testimony
16 regarding profits. I had previously indicated that
17 on the issue of punitive damages I would allow the
18 issue of profits; therefore, I would overrule that
19 objection.

20 Next is the testimony regarding the
21 graduation process on Page 14, Line 10, through Page
22 17, Line 22. I sustained that objection in regard to
23 the graduation process.

24 Next, on Page 11 the reference to
25 confidential markings I sustained. And then next the

1 references again on Page 19 and 21 to the graduation
2 process, I sustained the objection, and I sustained
3 the objection in regard to college marketing on the
4 basis that it is not relevant to this case.

5 Exhibit 2 regarding a poster being
6 distributed at a college, that is contained on Page
7 30, I sustained the objection.

8 Exhibit 4, I overruled the objection,
9 discussing a comparison between Skoal and Hawken
10 tobaccos. I sustain the objection on Page 43 and 44
11 in regard to the confidential markings.

12 The next one, it is Exhibit 5-A, and it is
13 an exhibit which was generated on June 29th, '84,
14 after the decedent's death. This has come up before,
15 and we had a discussion about it and I can't remember
16 what the discussion was, and I don't remember what my
17 ruling was. Does anyone know on that?

18 MR. BRALY: Yes, Your Honor.

19 MR. FINNEGAN: If the Court please, is this
20 the document that deals with the law of Kansas?

21 THE COURT: I'm not sure.

22 MR. BRALY: Yes, it is.

23 THE COURT: What did I rule on that?

24 MR. BRALY: Well, you allowed Cagley to go
25 into that, Your Honor. It says, "A lot of our

1 consumers are under 18 years of age and have been
2 users of smokeless tobacco for years."

3 THE COURT: I remember that.

4 MR. FINNEGAN: You ruled out the law which
5 was the documents that were underneath that.

6 THE COURT: Exactly.

7 MR. FINNEGAN: So you let in the first
8 document and ruled out the other.

9 THE COURT: Yes, that would be my ruling
10 then in regard to this objection.

11 On the Exhibits 6-A through 6-H, which are
12 the newspaper clippings, is it my understanding that
13 all those clippings were in the files of U.S. Tobacco
14 Company?

15 MR. BRALY: Yes, Your Honor.

16 THE COURT: All right. I think probably
17 some of those are admissible and some are not
18 admissible. Some of those were dated, I believe,
19 after the death of Sean Marsee. Those before I think
20 would go to the issue of notice in regard to young
21 people using tobacco, so we will take up after the
22 reading of the deposition which of those I will
23 actually allow into evidence.

24 I don't believe you discuss in the
25 deposition each of the exhibits. You just make

1 reference to the newspaper articles.

2 Exhibits 7-A and 7-B, which are the toy
3 cars, I sustained previously the objection and again
4 I will sustain the objection. Those were prepared
5 after his decease, and I don't think they are
6 necessarily impeaching, although that's the basis on
7 which they were offered.

8 MR. BRALY: Your Honor, --

9 THE COURT: Yes.

10 MR. BRALY: -- there's one line by Mr.
11 Bantle in there I would like to call the Court's
12 attention to. If you will look at Page 55 of the
13 transcript, it is right in the middle of the toy car
14 business, which starts Page 55, Line 16.

15 THE COURT: Yes.

16 MR. BRALY: What he in effect is saying
17 right there is "I haven't seen these toy cars, but
18 the ones that we used to sell or give away at the
19 race track, we discontinued doing that."

20 Now, that would appear to me to be very
21 relevant because he's confessing that they have been
22 doing it in the past, and I don't quite know how to
23 get that in in a vacuum of his other toy cars.

24 In other words, I guess what I am saying is
25 I want the record to be clear on is that these

1 particular two toy cars represent an ongoing course
2 of conduct that is reflected against the company and
3 their marketing activities to young people as
4 reflected in his testimony down here when he said, "I
5 believe that some steps have been taken to
6 discontinue it."

7 And I asked, "I thought you just told us you
8 were unaware."

9 He says, "Not these -- " and he's referring
10 to the toys that are in front of him -- and he says,
11 " -- little models that they sell at the race track,
12 sir." Those are the ones that he is referring to as
13 to steps that have been taken to discontinue them.

14 And I guess what I am trying to say is that
15 with respect to not only these particular toy cars,
16 which as the Court noted we offered to impeach his
17 sworn denials that they ever intended to market to
18 young people, they represent a continuing course of
19 conduct to which the chairman of the board has
20 confessed in his deposition.

21 THE COURT: Mr. Jennings.

22 MR. JENNINGS: If the Court please, I think
23 that the cars that were being offered -- and,
24 incidentally, those cars are sitting on the table in
25 the video part of the deposition. I think if the

1 Court is ruling that they are not admissible, they
2 are going to have to be careful about that, but the
3 particular cars that they offered in evidence, the
4 Court has ruled are not admissible and there is no
5 identification of what cars Mr. Bantle is talking
6 about.

7 He says "not these," referring to the cars
8 on the table. Says "little models that they sell at
9 the track, sir," and I don't know what he is talking
10 about and I don't think that his deposition reveals
11 what he's talking about.

12 THE COURT: I will just sustain the
13 objection to that, Mr. Braly. I am just satisfied
14 that it is not admissible and just delete that from
15 the deposition.

16 Next, again, the testimony at Page 56, 4
17 through 7, overruling the objection regarding income
18 and profit. Likewise, on Page 63, I am overruling
19 that objection. The same on Page 65.

20 Overrule the objection on Page 72, the
21 confidential stamp. I am sustaining that objection.
22 Page -- well, the next Exhibits 14 and 15 in regard
23 to the Lotus Project, was there just one of those
24 exhibits that was admitted?

25 MR. BRALY: It was just that one page

1 apparently, but we intend to offer the entire
2 documents, and I presume that the tobacco company
3 wants them offered, too, because of their, at least,
4 their allegations with respect to the source of that.

5 THE COURT: I believe at the time I just
6 admitted the second page and the attachment. I would
7 imagine that you would want the first part of it, if
8 that's admitted, also, --

9 MR. FINNEGAN: What was the exhibit, Mr.
10 Braly? I'm sorry.

11 MR. BRALY: It was the Lotus document that
12 had the target group of 15- to 34-year-olds.

13 MR. FINNEGAN: Your Honor, we want the whole
14 document.

15 THE COURT: All right. That will be
16 overruled then, the objection to those documents.

17 I sustained the next objection to the
18 confidential stamps on Page 82, 90, 93, 94, sustain
19 the objection to the graduation process on Page 94
20 through 98, sustain Exhibit 16 and related testimony
21 in regard to Skoal Bandit, which occurred after
22 decedent's death.

23 Sustain the confidential stamp markings on
24 Page 98 and Page 101 through 102. Sustain the
25 objection to Exhibit 17 and related testimony in

1 regard to the graduation process. Sustain the
2 objection to the sampling of Skoal Bandits.
3 Likewise, sustain the objection to Exhibit 18,
4 dealing with the graduation process, and likewise on
5 Exhibit 19. Sustain the objection to the
6 confidential stamp on Page 108, 110, and 113.
7 Sustain the objection in regard to the colloquy from
8 Page 114 to 116.

9 Now, next is -- oh, the exhibit relating to
10 the 1952 document published by I believe it is
11 Tobacco Institute and signed by U.S. Tobacco in
12 regard to cigarette advertising. At least, you
13 indicated that you wanted it admitted for the purpose
14 of showing that the No. 1 priority of the tobacco
15 business was health.

16 MR. BRALY: It says at the bottom of the
17 document that was Deposition Exhibit 22-A and marked
18 as Trial Exhibit 172-A, which says, "We accept an
19 interest in people's health as a basic responsibility
20 paramount to every other consideration in our
21 business."

22 THE COURT: I am allowing that statement
23 in. What about the exhibit itself?

24 MR. FINNEGAN: Well, as I understood the
25 Court's ruling, you are going to let the testimony

1 about that in.

2 THE COURT: Yes.

3 MR. FINNEGAN: Although we don't believe
4 that that is relevant to the issues in this lawsuit,
5 if the testimony is going to come in, we think that
6 the exhibit ought to come in.

7 THE COURT: You do want the exhibit in? Is
8 that right, Alston? I think that --

9 MR. FINNEGAN: Well, we see no purpose in
10 having it in then, Your Honor. If we can exclude it,
11 I think we prefer to exclude it, yes.

12 THE COURT: What is your position, Mr.
13 Braly?

14 MR. BRALY: Well, the witness adopted it as
15 the corporate policy during the course of his
16 deposition, and we think that that statement stands
17 in stark contrast to the company's actions.

18 THE COURT: I am allowing in the statement.

19 MR. BRALY: I understand that.

20 THE COURT: My only concern, I think a
21 document 34 years ago, as far as what the Tobacco
22 Institute was saying about cigarettes, I really don't
23 think is relevant at this time, so --

24 MR. BRALY: It wasn't the Tobacco
25 Institute. The U.S. Tobacco Company signed the

1 document.

2 THE COURT: I understand, but I don't
3 believe the document itself would be relevant, but I
4 will allow the testimony concerning that statement,
5 which is what you were particularly concerned about,
6 anyway.

7 MR. FINNEGAN: If the Court please, just for
8 the record, that was the research organization. That
9 was not the Tobacco Institute.

10 THE COURT: I'm sorry.

11 MR. FINNEGAN: The Tobacco Institute did not
12 come into existence for several years, but it has
13 been 34 years since that was made.

14 THE COURT: All right. Next in somewhat of
15 a thorny problem, which I spent some time on last
16 night, is the issue of lobbying activities of U.S.
17 Tobacco Company. Defendant takes the position that
18 evidence of their lobbying activities with Congress
19 is inadmissible because it deals with their right to
20 petition Congress and offering that into evidence
21 would have a chilling effect on their right to
22 exercise that right.

23 Have I stated in essence your position?

24 MR. JENNINGS: (Nodding yes).

25 THE COURT: What is your position, Mr. Braly?

1 MR. BRALY: Your Honor, I don't pretend to
2 be an expert on this subject, but my understanding of
3 Noerr Pennington line of cases that they arrive or
4 deal with liability that flows from that action.
5 They dealt with trying to prove a conspiracy through
6 that evidence.

7 In this instance we have got a company that
8 is taking the position that warnings are not
9 appropriate and then they are going out and lobbying
10 Congress to keep Congress from putting on warnings,
11 and yet they have come into this Court and in Mr.
12 Jennings' opening statement and tried to take
13 advantage that Congress did not cause warnings to be
14 put on these products years ago and cite that as an
15 argument in their favor. If they hadn't done that, I
16 might tend to agree with the Court.

17 The Court may recall in Mr. Jennings'
18 opening statement he made remarks to the effect that,
19 you know, nobody made them put warnings on, the
20 Surgeon General had just only found this and that the
21 Surgeon General hadn't said anything about these
22 products and hadn't placed warnings on them up until
23 this time.

24 So our position is if they are going to try
25 and take advantage of that argument, that they need

1 to live with the heat from the other side of it,
2 showing that they -- for instance, one other witness
3 indicated that at one time they threw a shindig in
4 Washington, DC, in which 500 Congressmen and their
5 staff appeared and that the subject matter of that
6 was the issue of warning on snuff products.

7 THE COURT: Okay.

8 MR. JENNINGS: If the Court please, it seems
9 to me that Mr. Braly is starting with the assumption
10 that it was lobbying on the part of the U.S. Tobacco
11 Company that kept Congress from acting, and I don't
12 think that is a fair assumption. I assume that the
13 Congress heard from other people besides U.S.
14 Tobacco, and they heard from the Surgeon General. I
15 don't assume he's charging us with bribing the
16 Surgeon General. I think that no matter how you look
17 at it, if the fact that any citizen or any
18 corporation that has petitioned Congress is going to
19 be admissible in evidence against them in a lawsuit,
20 that tends to chill their exercise of their right.

21 THE COURT: Well, I spent a significant
22 amount of time considering this yesterday evening. I
23 frankly cannot see much difference. I agree with
24 your concept, but I don't see much difference in
25 saying that your right to petition Congress has a

1 chilling effect if it is admitted in a trial than to
2 say your right to exercise your freedom of speech,
3 which people do and regularly have that speech
4 admitted against them, is chilled by the fact that
5 that is admitted against them, and you cite the case
6 of United Mine Workers vs. Pennington, and it does
7 rule, as you say, that that solicitation cannot be
8 the basis of an antitrust action.

9 However, in a footnote it also says, "It
10 would, of course, still be within the province of the
11 trial judge to admit this evidence, if he deemed it
12 probative and not unduly prejudicial, under the
13 established judicial rule of evidence that testimony
14 of prior or subsequent transactions, which for some
15 reason are barred from forming the basis for a suit,
16 may nevertheless be introduced if it tends reasonably
17 to show the purpose and character of the particular
18 transaction under scrutiny."

19 Obviously they are not saying that such
20 activities are barred for all purposes, and I just
21 think that the whole significant question in this
22 trial is the need for a warning, and the defendant's
23 activities in keeping off that warning would be an
24 appropriate subject for the jury to consider.

25 MR. BRALY: Judge, I may offer one citation

1 for the Court. It is a Tenth Circuit decision, Webb
2 vs. Utah Tour Brokers Association, 568 Fed. 2nd, 670.
3 I pulled it down off West Law last night and early
4 this morning.

5 The head note in that case says, "The fact
6 that members of a tour brokers association brought
7 legal action in an effort to enjoin potential
8 competitors from operating as a tour broker, it also
9 filed a protest with the Interstate Commerce
10 Commission opposing the issuance of a certificate to
11 potential competitors, does not suffice to establish
12 per se violation of the antitrust laws. However, the
13 proceedings in court before the I.C.C. had
14 evidentiary value as to the objects and motives of
15 the tour broker association's members."

16 I think that is consistent with what the
17 Court is saying in this. It is a Tenth Circuit
18 decision.

19 THE COURT: All right. Anything else before
20 we bring in the jury?

21 MR. BRALY: Yes, Your Honor, I have one
22 thing that I would briefly like to call the Court's
23 attention to with respect to Bantle's deposition.
24 First off, we would, of course, make an offer of
25 proof of the entire deposition.

1 The second thing is there at the very
2 beginning of the testimony about the graduation
3 process, Page 14 of the deposition through 17. I
4 don't think I mentioned graduation anywhere in there.
5 They object to it -- objected to it, calling it --
6 calling it the graduation process. What I did was I
7 started asking about starter product.

8 The reason it was done as the Court looks at
9 it was to call Mr. Bantle's attention to the nicotine
10 in the product, and it really doesn't deal directly
11 with graduation process, in spite of the fact that
12 that is what the defendants have called it in an
13 effort to kind of drag it into the scope of the
14 Court's order. What we have here is the chairman of
15 the board dissembling for several pages of the
16 transcript as to what it is in tobacco that causes
17 people to be dizzy, and the only way I had of getting
18 at this was to get him to talk about people who were
19 not used to the product, and I think it has been
20 unfairly characterized by the defendants and falls
21 within the ambit of the Court's graduation order; and
22 after having asked the chairman of the board on
23 repeated occasions to tell us what it was that was
24 causing people to get sick, I never could get him to
25 openly admit that until finally I had to ask him,

1 "Well, isn't it the nicotine?"

2 And I think his dissembling on this issue is
3 important for the jury to understand.

4 THE COURT: Where is it that you say he
5 admits --

6 MR. BRALY: Well, if you look at the end of
7 the portion, the objection was sustained from Pages
8 14 to Page 17, and right above that I say,
9 ultimately: "Question: Well, is there anything in
10 the tobacco that makes them ill?

11 "Answer: Well, there must be.

12 "Question: Are you aware of anything in the
13 tobacco that makes them ill?

14 "Answer: I'm not sure. I'm not a medical
15 doctor."

16 The next question which the Court is going
17 to let in was: "Tell the jury, have you ever heard
18 of a substance in tobacco called nicotine?"

19 Well, in a vacuum that question doesn't mean
20 very much. I assume that everybody on the jury would
21 have felt that Mr. Bantle would have heard of
22 nicotine, but without the portion of the deposition
23 that has been stricken, they won't understand that
24 the man has been refusing to identify the obvious for
25 three pages.

1 Like I say, I don't think the word
2 "graduation" is ever mentioned in those three or four
3 pages.

4 THE COURT: I'll tell you what I will do. I
5 will let you start at Line 9 on Page 17. I think you
6 could make your point from there forward without
7 going into what the starter product concept is. See
8 what I am talking about?

9 MR. BRALY: Yes.

10 THE COURT: Anything else?

11 MR. BRALY: Your Honor, yes. We at this
12 time would like to urge a motion to bar the defendant
13 from asserting at any time during the subsequent
14 course of this trial that their advertising did not
15 appeal to young persons. We at this point are being
16 prohibited from offering impeaching evidence on this
17 point in the form of, for instance, the toy cars, and
18 Mr. Garrison, for instance, in his deposition
19 indicated that all they ever did was sincere
20 advertising, -- I believe those were his exact
21 words -- and we have been barred from using this
22 exhibit, which is the famous exhibit of Bandit's
23 girl, and we think that one would readily perceive
24 this exhibit as not being an example of sincere
25 advertising within the scope of Mr. Garrison's

1 testimony. And, therefore, at this time, of course,
2 we would like to use this exhibit in connection with
3 Mr. Bantle's deposition. So we would at this time --

4 THE COURT: What is "sincere advertising"?

5 MR. BRALY: Pardon?

6 THE COURT: What is "sincere advertising"?

7 MR. BRALY: Well, the way they put it, it
8 was athletes that use their snuff product. "We don't
9 use anybody to advertise our product that don't dip
10 snuff."

11 Well, Judge, I sort of doubt this lady dips
12 snuff. And, therefore, it is quite pertinent to
13 impeach the company on the position that Mr. Garrison
14 took in his deposition that the company only believed
15 in sincere advertising. And, you know, I don't want
16 to get in the situation where they open it up and
17 start trying to tell the world all these sincere
18 things they have been doing and we have been excluded
19 all along from presenting appropriate evidence.

20 We don't think toy cars with Copenhagen
21 Racer are examples of sincere advertising. And so we
22 at this time, we haven't filed a written motion on
23 the subject. We would ask the Court to exclude any
24 reference or any attempt on the part of the defendant
25 to assert that they did not advertise to young people

1 or that -- in any way or that their advertising was
2 only sincere advertising, unless we are allowed to
3 use the appropriate available tools to cross-examine
4 those people.

5 THE COURT: Well, I think what I have said
6 repeatedly is that the advertising that would have
7 had a bearing on Sean Marsee is relevant in this case
8 and whether or not a tractor is sincere or insincere
9 advertising, I don't know. I don't particularly
10 think that is an issue in this case that the jury
11 needs to deal with. I will overrule your objection
12 or your motion.

13 Anything else?

14 There is a tape, -- Is it 16-D? -- 16-D on
15 which apparently there were several advertisements
16 that we just played. What did we play?

17 MS. DESCHAMPS-BRALY: Carlton Fisk.

18 THE COURT: Carlton Fisk. I think the
19 record should reflect that that is the only
20 advertisement from that tape which was played to the
21 jury, because the tape itself was going to be an
22 exhibit in the case, and just for the purpose of the
23 record I want it to reflect that.

24 MR. BRALY: Your Honor, there is one other
25 tape called "The Business of Pleasure." It is a

1 corporate tape. It's a fairly long tape. It is
2 like, my recollection, it is 35 or 40 minutes long,
3 and it describes the company's activities in some
4 considerable detail; but it contains one particular
5 portion of the tape that shows a company
6 representative pitching cans of snuff into a crowd at
7 a rodeo, and we would first offer the entire tape
8 and, second, in particular would offer that portion
9 of the tape that shows the surrounding portion of it
10 so they can get the context that shows a company
11 representative pitching cans of snuff into the crowd.

12 I presume they are going to object, so I
13 thought since we didn't have a jury in here, I would
14 bring it up right now.

15 MR. FINNEGAN: Well, we do object to that
16 exhibit, Your Honor. As I understand it, that
17 exhibit was made for internal circulation,
18 distributors and people within the company. It has
19 never been shown to anybody outside of the company.
20 I do not have in mind the particular portion that Mr.
21 Braly refers to, but I don't see that that's relevant
22 to the issues in the case.

23 THE COURT: You are not planning on offering
24 it right now, are you?

25 MR. BRALY: No, but, like I say, you asked.

1 if there was anything else, and I thought I would
2 bring it up.

3 THE COURT: I would just take that under
4 consideration. There is already an abundance of
5 records in the evidence about their activities at
6 rodeos. What does this add to the record?

7 MR. BRALY: Well, this is a specific example
8 with somebody with a box of snuff, and he's going
9 across the aisle in front of the grandstand at the
10 rodeo and he's taking cans of snuff and playing
11 Frisbee with them up to the crowd.

12 THE COURT: Doesn't Mr. Bantle in his
13 deposition admit that free samples were handed out at
14 football games and rodeos?

15 MR. BRALY: Yes, I believe he does. But,
16 Judge, it is one thing for Mr. Bantle in a very calm
17 and cool and collected manner as the chief executive
18 officer to confess that this was on occasion done.
19 It is something else for the jury to actually see it
20 being done in quite rapid manner.

21 THE COURT: I will just consider that.

22 MR. FINNEGAN: Thank you.

23 THE COURT: Thank you.

24 All right. Bring in the jury.

25 (The following proceedings were had IN THE PRESENCE

1 OF THE JURY.)

2 THE COURT: Good morning, ladies and
3 gentlemen, yesterday, we were able to get ahold of
4 most of you, not all of you, for the purpose of the
5 record, let me ask if anyone watched inadvertently
6 watched the 60 Minutes show or heard anyone discuss
7 the 60 Minutes show last night? Anyone?

8 As I mentioned yesterday, there was a
9 segment involving this case, and I was just afraid
10 that you might have inadvertently watched part of it,
11 so we just wanted to alert you to that fact. Thank
12 you very much. The parties both appreciate your
13 cooperation.

14 Call your next witness, plaintiff.

15 MR. BRALY: Your Honor, we call Gerald
16 Gilmartin. He will be taken by deposition, with my
17 reader.

18 THE COURT: Are there objections that we
19 need to take up in regard to this deposition?

20 MR. FINNEGAN: No, Your Honor, I think
21 everything has been worked out by agreement.

22 THE COURT: Thank you.

23 MR. BRALY: Your Honor, this is the
24 deposition of Gerald Gilmartin. Gerald Gilmartin,
25 taken on behalf of the plaintiff on the 5th day of

1 May, 1986, in New York City.

2 GERALD GILMARTIN,
3 of lawful age, who being first duly sworn, deposes
4 and says in reply to the questions propounded as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BRALY:

8 Q. State your full name, please.

9 A. Gerald Gilmartin.

10 Q. Mr. Gilmartin, where do you live?

11 A. [DELETED]

12 Q. How long have you lived there?

13 A. 25 years.

14 Q. How are you presently employed?

15 A. I am the principal officer and owner of a
16 public relations firm called Prudential Public
17 Relations.

18 Q. How long have you been in the public
19 relations business?

20 A. 34 years.

21 Q. Did you go to college?

22 A. Yes, I did.

23 Q. Where did you go to college?

24 A. New York University.

25 Q. And when was that, sir?

1 A. 1950 through 1953 -- 4.

2 Q. What did you study there?

3 A. Journalism, primarily.

4 Q. What was your occasion to get into public
5 relations?

6 A. I was in the newspaper business prior to
7 that, which is a natural area to move from to the
8 public relations business.

9 Q. When did you get into public relations?

10 A. 1952.

11 Q. And what were you doing then and who were
12 you working for?

13 A. I worked for an agency called Allied Public
14 Relations.

15 Q. Where were they located?

16 A. At various locations in Midtown, 57th and
17 5th; 250 Park.

18 Q. Mr. Gilmartin, you need to understand that
19 you are talking to a jury in Oklahoma City and I'm
20 not sure they understand what Midtown is. Midtown,
21 New York?

22 A. Midtown Manhattan, I'm sorry.

23 Q. Who were some of the clients of Allied
24 Public Relations?

25 A. Balentine, Ail & Behr; New York Shipbuilding

1 Corporation, Mack Trucks, Merra, Chapman & Scott,
2 Allied Van Lines.

3 Q. What is public relations?

4 A. Public relations is an occupation in which
5 one attempts to promote a product or a service or
6 perhaps an industry and to disseminate information
7 about that industry, product or service.

8 Q. What does a person in this field do in order
9 to accomplish those purposes?

10 A. We employ the basic tools of the trade which
11 are largely publicity, that is to say, to prepare
12 information for use by various media. They use
13 various means to call attention to services,
14 products, industries. They participate in various
15 forums to project the views of the various entities
16 that I have discussed. They consult and counsel
17 their clients on various positions to be taken
18 relative to certain issues. These basically would be
19 the functions of public relations. Again, it is a
20 very broad subject. I don't think for one moment
21 that I covered all of the areas, but basically those
22 are the functions.

23 Q. When did you leave Allied Public Relations?

24 A. In 1965.

25 Q. And where did you go?

1 A. I established my own firm, Prudential Public
2 Relations.

3 Q. Have you worked through Prudential Public
4 Relations continuously since 1965?

5 A. I have.

6 Q. And for the last 21 years, then?

7 A. Yes.

8 Q. Have you worked for anybody else besides
9 Prudential Public Relations during that period of
10 time?

11 A. When you say "worked for," we have had
12 clients that we would work for, but the agreements
13 for the most part were between those clients and
14 Allied Public Relations -- Prudential Public
15 Relations.

16 Q. Mr. Gilmartin, do I understand from your
17 answer that Prudential Public Relations had a number
18 of clients in that they, Prudential Public Relations
19 was one that contracted for these clients to provide
20 these services?

21 A. Prudential Public Relations had contractual
22 arrangements with various companies, and I worked for
23 Prudential, and the agreements were between
24 Prudential and the various companies, including the
25 snuff and chewing tobacco companies.

1 Q. Some of those agreements would provide that
2 Prudential would furnish Gerry Gilmartin individually
3 to provide certain services; is that correct?

4 A. I'm not absolutely certain of that. I would
5 say not. I would think that the contracts that were
6 in existence early on did not make that provision or
7 did not have that provision. There was a point I
8 believe when the contracts may have stipulated that
9 Gerry Gilmartin's services would have to be
10 included. I'm not certain on that point without
11 having -- but I would have to look at the documents
12 in order to make certain.

13 Q. When did you first start working for any
14 part of the tobacco industry?

15 A. 1957, in the latter part of that year,
16 October, November.

17 Q. What was that connection at that time?

18 A. I was with Allied Public Relations, an
19 agency which was servicing various companies within
20 the snuff segment of the tobacco industry. And I
21 worked as an account person on the so-called snuff
22 account while at Allied Public Relations.

23 Q. What do you mean by the snuff account at
24 Allied Public Relations?

25 A. We referred to it loosely as the snuff

1 account because its chief components were three
2 companies, four companies that were engaged in the
3 snuff business.

4 Q. Who were those companies?

5 A. United States Tobacco Company, the American
6 Snuff Company, George W. Helme Company, H-e-l-m-e;
7 and the Brown & Williamson Tobacco Corporation.

8 Q. What did Allied Public Relations do on
9 behalf of those four companies?

10 A. That is your question?

11 Q. Yes, sir.

12 A. It performed public relations,
13 informational, educational services for the account.
14 These would be the kinds of services that I sort of
15 outlined previously as being representative of what
16 PR services consist of.

17 Q. What do you mean by educational services?

18 A. Well, acquainting obviously first the media
19 and through the media others as to the product, its
20 use, its history, its background. Basically, that's
21 the background or that's the kinds of information
22 that would have been disseminated about the product.

23 Q. Now, you said you first became involved in
24 this in 1957?

25 A. Yes.

1 Q. Do you know how long that Allied Public
2 Relations had had this snuff account?

3 A. They obtained the account while I was on
4 their staff. It would have been about that period of
5 time, in the summer or fall of 1957, to the best of
6 my knowledge.

7 Q. How long did you continue to work on this
8 snuff account on behalf of Prudential Public
9 Relations?

10 A. I worked -- all of the years that
11 Prudential Public Relations was in existence, I
12 worked on this account for Prudential.

13 Q. And with respect to Allied Public Relations,
14 how long did you work on it for them?

15 A. Approximately eight years.

16 Q. From 1957 to 1965?

17 A. Approximately, yes.

18 Q. And it was at that time that Prudential
19 Public Relations took the account over?

20 A. That's correct.

21 Q. Basically, do I understand it correctly that
22 Prudential Public Relations is a public relations
23 firm that you are the head of?

24 A. Will you repeat the question?

25 Q. Is Prudential Public Relations a public

1 relations firm that you are the head of?

2 A. Yes, it is.

3 MR. BRALY: Page 15, Line 25.

4 Q. Was there an industry organization
5 specifically related to snuff during the period of
6 time from 1957 to 1965?

7 A. Yes.

8 Q. What was it called?

9 A. I believe several names were used during
10 that period of time if recollection serves. We at
11 one point were known as the Snuff Information Center,
12 and I believe there might have been a point in time
13 when we were called -- there was another entity I
14 believe at that time that was used specifically for a
15 poster program that was called the Snuff Industrial
16 Safety Bureau.

17 Q. They both basically hung their shingle in
18 the offices of Allied Public Relations?

19 A. That is correct.

20 Q. Did they have any offices apart and separate
21 from the offices of Allied Public Relations?

22 A. They did not.

23 Q. Were there any other names that they went by
24 that you can think of during those years?

25 A. Not that I can recall.

1 Q. Those names --

2 A. You say during those years, you mean --

3 Q. '57 to '65.

4 A. Not that I can recall.

5 Q. After 1965, how was the public relations
6 work carried on?

7 A. We continued to use the Snuff Information
8 Center and the Snuff Industrial Safety Bureau as
9 entities under which certain aspects of the program
10 were conducted, and that continued through the late
11 Sixties, early Seventies.

12 MR. BRALY: Page 18, Line 16.

13 Q. When did the name Smokeless Tobacco Council
14 come into existence?

15 A. In 1970.

16 Q. That name was used in the same way that the
17 name "Snuff Information Center" had previously been
18 used?

19 A. It was used as the entity to promote not
20 only snuff but snuff and chewing tobacco.

21 Q. And you did or Prudential Public Relations
22 did the day-to-day work for the Smokeless Tobacco
23 Council; is that correct?

24 A. Did the day-to-day work for them, yes.

25 Q. And where were their offices located?

1 A. At various locations in Midtown Manhattan,
2 including 250 Park Avenue, 10 East 44th Street, 18
3 East 48th Street. Those would be the locations in
4 New York City where we conducted business.

5 Q. Any other locations?

6 A. We moved from New York City at -- we moved
7 from the 18 East 48th Street address to [DELETED]
8 in 1973 or '4, in that period.

9 Q. What was the reason for that move?

10 A. There were perhaps several reasons. It
11 would surely be more convenient for my purposes. My
12 home is in [DELETED] so certainly the fact
13 that the same things that I could do for the industry
14 could be accomplished at a location closer to my home
15 than New York City was one of the considerations.
16 And I suspect that that was the largest and perhaps
17 the only consideration.

18 Q. Physically, where were the offices of the
19 Smokeless Tobacco Council located in relation to the
20 offices of Prudential Public Relations?

21 A. Let me, if I may, back up on your prior
22 question if you don't mind. At the time that we
23 moved from New York City to [DELETED] we were also
24 motivated by the fact that the various New York-based
25 tobacco companies that we were dealing with had also

1 moved to the suburbs. U.S. Tobacco had moved from
2 New York City to Greenwich, and the Helme Company had
3 moved from New York City to Helmetta, New Jersey. So
4 the two New York-based firms were no longer quartered
5 here in town, and that would have surely been one of
6 the reasons as well.

7 Q. The next question was where physically were
8 the offices of the Smokeless Tobacco Council located
9 in Peekskill in relation to the offices of Prudential
10 Public Relations?

11 A. They were located in the same building at
12 2066 East Main Street in Peekskill.

13 Q. If a person walked in and went into the door
14 of Prudential Public Relations, would that person in
15 fact be walking through the door of a Smokeless
16 Tobacco Council during those years?

17 A. Yes, he would. There was a name for all
18 three entities on the door.

19 Q. What were those three entities?

20 A. The Prudential Public Relations, Inc.; the
21 Smokeless Tobacco Council; and the Smokeless Tobacco
22 Safety Bureau.

23 Q. Mr. Gilmartin, how many people worked in
24 this office that had Smokeless Tobacco Council on the
25 door?

1 A. At any given period of time?

2 Q. Yes, sir.

3 A. Oh, it would vary. It was never surely any
4 more than four or five. More than likely one or two
5 or three.

6 Q. Was your wife one of those one or two or
7 three?

8 A. Yes, as a -- well, for some period she was,
9 yes. During the period I was in Peekskill, not while
10 we were in the city.

11 Q. During the period of time that you were in
12 Peekskill, which was after 1974?

13 A. Yes.

14 Q. The operation consisted of yourself and your
15 wife and at sometimes one other and sometimes two
16 other persons?

17 A. That's correct.

18 Q. And you took care of Smokeless Tobacco
19 Council?

20 A. That's correct.

21 Q. And the Smokeless Tobacco Safety Bureau?

22 A. Correct.

23 Q. What was that about?

24 A. The Smokeless Tobacco Safety Bureau was an
25 entity that we used in promoting a poster, industrial

1 safety poster program, largely. Posters, decals,
2 other kinds of visual aids were promoted through that
3 entity.

4 Q. What was the purpose of these was visual
5 aids?

6 A. Well, they were designed to improve safety
7 in various areas of industry, fire prevention,
8 materials handling, the proper use of tools, a whole
9 host of industrial situations, and the basic thrust
10 was to promote greater levels of fire prevention.

11 Q. The connection, I take it, was that
12 smokeless tobacco was less hazardous in terms of
13 creating fires than cigarettes?

14 A. Any lighted object. They were promoted in
15 the kinds of industries and occupations where it
16 might otherwise have been ill-advised to take a
17 lighted object.

18 Q. So there was a concern there on the part of
19 the four tobacco companies that you have mentioned to
20 prevent fires through encouraging the use of
21 smokeless tobacco?

22 A. I wish you would rephrase that. I am not
23 quite sure I understand.

24 Q. Well, was it the intent to promote an
25 unsmoked form of tobacco in order to help prevent

1 fires?

2 A. It was designed to suggest that there was a
3 form of tobacco that could be used on the job with
4 relative industrial safety.

5 Q. You understand what the word "safety" or
6 "safe" mean as opposed to the words dangerous or
7 dangerous situation mean?

8 A. That's why I am referring here to industrial
9 safety.

10 Q. Okay. You don't have any problem -- you
11 understand what those words mean?

12 A. I know what they mean, yes.

13 Q. Now, I want to ask you to explain to the
14 jury in this case in some detail what you did on a
15 day by day or month by month basis on behalf of the
16 Smokeless Tobacco Council?

17 A. At any given period of time?

18 Q. Let's say 1974 or '5.

19 A. Well, first and foremost I served as the
20 spokesperson for the industry so that a percentage of
21 my time would have been devoted to fielding questions
22 from various media sources perhaps; dealing with
23 inquiries by the way of correspondence and others;
24 communicating views relative to our safety programs;
25 servicing requests from the industry for information;

1 communicating with counsel to the industry.

2 Q. When you say counsel --

3 A. Legal counsel to the industry.

4 Q. -- are you talking about the industry's
5 attorneys?

6 A. Yes, communicating with the persons who
7 would at that point perhaps be serving as the
8 chairman or president of the Council and perhaps
9 members of the board as well. I would be acquainting
10 myself with what was being said about the industry.
11 I think that would largely constitute the most
12 commonplace activities.

13 Q. How was the Smokeless Tobacco Council
14 organized?

15 A. How was it organized? It was established as
16 a not-for-profit corporation in the State of New
17 York.

18 Q. Did it have a board of directors?

19 A. It did.

20 Q. Who sat on the board of directors?

21 A. At what point in time?

22 Q. Let's try 1975 to begin with.

23 A. Well, you are testing me now. We had a
24 board that generally consisted of two members from
25 each of the member companies, so in the mid 70's

1 conceivably it could have been perhaps
2 Mr. Rosson, Mr. Kondon, of the American Snuff Company
3 or the Conwood Corporation. It could have been
4 perhaps Mr. Tradenick and Mr. Cullman perhaps of the
5 Helme Company. It could have been Louis Bantle and
6 perhaps James Chaplin of the U.S. Tobacco. It is
7 hard to say. I don't recall the makeup of the board
8 for any specific year.

9 Q. All the people you have just mentioned at
10 one time or another have in fact been on the board,
11 though, haven't they?

12 A. That's correct.

13 Q. Mr. Chapin is a legal counsel to the U.S.
14 Tobacco Company.

15 A. Yes.

16 Q. Now, when did the Smokeless Tobacco Council
17 become the Smokeless Tobacco Council, Incorporated?

18 A. In the latter part of 1970.

19 Q. '70?

20 A. Yes.

21 Q. Have you ever served as an officer of that
22 corporation?

23 A. Yes.

24 Q. And what position did you hold?

25 A. Executive vice-president and

1 secretary-treasurer.

2 Q. Who would customarily be the president of
3 that organization?

4 A. It was on a rotating basis, largely, so it
5 would be some of the very same people that I
6 mentioned to you, with some exceptions.

7 Q. Would that have included Mr. Chapin or Mr.
8 Bantle?

9 A. Louis F. Bantle was president to my
10 recollection in the early Seventies. Mr. Chapin was
11 never president of the counsel, to my recollection.
12 Mr. Rosson perhaps of the Conwood Corporation served
13 as president.

14 Q. You mentioned that one of your duties was to
15 make yourself familiar with what was being said about
16 the industry; is that correct?

17 A. Yes.

18 MR. BRALY: Page 28, Line 14.

19 Q. Mr. Gilmartin, at any time while you were
20 associated with the Smokeless Tobacco Council, and
21 the Snuff Information Center, before the Smokeless
22 Tobacco Council came into existence, was there ever
23 any discussion about any health hazards associated
24 with the use of smokeless tobacco?

25 A. Yes.

1 Q. How did you first come to learn about that
2 subject?

3 A. Well, as I indicated, we would receive data
4 and printed material through our reading services. I
5 would of course research the subject. I would
6 research any aspect of our product in order to be
7 acquainted with it. I would go to libraries to
8 various sources, government agencies, and obtain
9 whatever it was that was out there that dealt with
10 the product and industry. If the question, did some
11 of that include medical data, yes. And as I say
12 those would be basically the sources we would
13 consult.

14 Q. Up to 1980, do you know of anybody else
15 besides yourself that was researching the medical
16 literature on this subject on behalf of any of the
17 member companies?

18 A. I would say that each of the companies
19 internally would be looking at the subject, and I
20 would say legal counsel would be looking at it, as
21 well.

22 Q. Do you know that to be a fact from your
23 personal conversations with those persons?

24 A. Yes, I believe so.

25 Q. Now, on behalf of the Smokeless Tobacco

1 Council, you were authorized to issue press releases,
2 were you not?

3 A. Yes.

4 Q. And you did in fact do that from time to
5 time, didn't you?

6 A. Yes.

7 Q. Did you ever issue a press release that in
8 any way indicated that there were physicians or
9 scientists that believed there was a connection
10 between smokeless tobacco and cancer of the mouth?

11 A. You are covering a very, very broad area. I
12 mean, releases, communications from my office went
13 out to a number of sources over the years, and if you
14 can cite something specific, I can comment.

15 Q. Well, I am really not hunting for anything
16 specific. What I am hunting for is an answer to the
17 general question is, did you ever cause to be issued
18 out of the office of the Smokeless Tobacco Council
19 any statement that in any way said, "Hey," in
20 substance, said something to the effect that "Hey,
21 there are doctors and scientists out there that
22 believe that snuff is causing cancer of the mouth?

23 A. Oh, I believe in our conversations certainly
24 with the media now, I am not saying this would have
25 been in the form of a release, as you characterized

1 it, but in communications with the media that we
2 would indicate that we were apprised of and cognizant
3 of various literature on the subject of health, yes.

4 Q. You were telling the media that you read the
5 literature, then?

6 A. I would not tell the media that I read all
7 of the literature. Obviously, I did not, and I am
8 not a medical person. I was aware of the fact that
9 certain studies had been conducted, were in
10 existence.

11 Q. And so you --

12 A. Including the Surgeon General's report and
13 government agency reports.

14 Q. So you acknowledged your knowledge of those
15 reports to the media?

16 A. Yes.

17 Q. But my question goes further than that, Mr.
18 Gilmartin, and that is did you turn around and
19 specifically advise the media that this information
20 was available and they ought to communicate this to
21 the public?

22 A. I don't recall an incident in which I would
23 have done specifically that, no.

24 Q. What if any relationship does the Smokeless
25 Tobacco Council have to the funding of any medical

1 research?

2 A. During the early years of the Council under
3 its incorporated structure, the counsel funded
4 certain research by medical investigators.

5 Q. Can you give me an idea of what years you
6 are referring to?

7 A. Largely during the period -- you are talking
8 about while I was involved?

9 Q. Yes.

10 A. During the period of roughly the late
11 Sixties through the mid Seventies.

12 Q. What is the Smokeless Tobacco Research
13 Council?

14 A. Smokeless -- again, this is something that I
15 am not altogether privy to. I have never had any
16 direct affiliation with the Smokeless Tobacco
17 Research Council. In terms of my understanding as to
18 what it is, it is an entity established and funded by
19 the Smokeless Tobacco Manufacturers to conduct
20 independent research in the area of health and
21 medicine, I suspect.

22 Q. Do you know when it was established?

23 A. Along about 1981, I believe.

24 Q. Prior to that time, any medical research
25 that was done jointly by the industry would have been

1 funded through the Smokeless Tobacco Council; is that
2 correct?

3 A. I don't know. There was research funded
4 through the Council that I was involved with.
5 Whether there was research conducted outside of that
6 entity, I couldn't answer.

7 MR. BRALY: Page 34.

8 Q. Let me hand you what has been marked as
9 Plaintiff's Exhibit 3 to your deposition.

10 MR. BRALY: Your Honor, it has been marked
11 as Exhibit 281 in this trial.

12 Q. (BY MR. BRALY) And ask you to tell the jury
13 what that document is.

14 MR. BRALY: You can skip to the top of the
15 next page.

16 A. It's a document that sets forth the
17 refunding of certain funds that were in the Smokeless
18 Tobacco Council's so-called medical research account
19 for the purposes of redistributing those funds prior
20 to the establishment, I believe, of the STRC or the
21 Smokeless Tobacco Research Council.

22 Q. Let me call your attention to Page 4 of the
23 document. There is a column there listed U.S.
24 Tobacco. It is about the fourth or fifth column over
25 from the left. Do you see that column, sir?

1 A. I do.

2 Q. There is a total number of dollars in that
3 column and the column is labeled "U.S. Tobacco."
4 What is the total dollars there on that column?

5 A. \$192,108 and change.

6 Q. And what does that number represent?

7 A. It represents U.S. Tobacco's assessment for
8 research expenditures by the Council from the period
9 February 1, '78, through December 31st, 1981.

10 Q. Well, lacking one month it will be a period
11 of four years.

12 A. I suspect.

13 Q. Is that correct?

14 A. It would appear to be so, yes.

15 Q. Now, you mentioned that there was a medical
16 research account for the Smokeless Tobacco Council;
17 is that correct?

18 A. Yes.

19 Q. And who made the determination as to where
20 that money was spent?

21 A. During what period of time are you referring
22 to?

23 Q. Say those four years that are represented in
24 that document.

25 A. During that period, to the best of my

1 recollection, there was an entity referred to, a
2 committee of the whole referred to as the Scientific
3 Research Committee, which had membership from each of
4 the member companies. And it was that committee that
5 made the recommendations to the board relative to the
6 distribution of funds for medical work.

7 Q. Do you remember who any of the members of
8 the scientific research committee were?

9 A. Yes.

10 Q. Could you give us some of those names?

11 A. Well, Word B. Bennett, who was
12 vice-president, Research & Development for the United
13 States Tobacco Company. William Rosson, who was the
14 president of Conwood; and Stuart Block, who was -- I
15 am trying to think -- was with the Helme Company at
16 the time.

17 Q. Do you know what he did?

18 A. He operated in some marketing capacity for
19 the smokeless tobacco segment of the Helme Tobacco
20 Company business.

21 Q. Anybody else that you can remember?

22 A. As being members of that organization, SRC?

23 I think not, no. I believe those were the
24 only persons that I can recall who sat on that
25 committee.

1 Q. Did you ever attend any of those meetings?

2 A. If I did, I don't recall. I don't believe
3 so.

4 MR. BRALY: Page 41.

5 Q. You mentioned that you had posters on the
6 fire hazards of cigarettes and the relative safety of
7 snuff.

8 A. Not cigarettes. We never mentioned
9 cigarettes.

10 Q. You had industrial posters made that
11 suggested you could use smokeless tobacco in places
12 where there might be fire hazards, correct?

13 A. Well, the inference of the material was
14 such, but we never said that.

15 Q. You inferred it in the material?

16 A. Yes.

17 Q. Did you ever publish such a poster that
18 inferred there might be a hazard from using smokeless
19 tobacco to the person that used it?

20 A. No, we did not, to my recollection.

21 Q. Mr. Gilmartin, let me hand you what has been
22 marked as Plaintiff's Exhibit 4, and for further
23 identification it is a document that has been
24 retrieved from the files of the United States Tobacco
25 Company, bearing a number of 2139057. Can you tell

1 me what that document is, sir?

2 A. The document is a memo and various
3 attachments sent from me to Hugh Foley at U.S.
4 Tobacco and with copies also sent to L. F. Bantle and
5 Dick Gauvain. And the documents or various reports
6 from various medical journals and other publications
7 dealing with the subject of smokeless tobacco.

8 Q. In addition to sending this to Hugh Foley,
9 you also sent it two other people, didn't you?

10 A. Yes, as I have indicated.

11 Q. And who were the other two people?

12 A. L. F. Bantle and Dick Gauvain.

13 Q. Who is L. F. Bantle?

14 A. L. F. Bantle is the chairman and chief
15 executive officer of United States Tobacco Company.

16 Q. What was the purpose of transmitting those
17 documents to those three gentlemen?

18 A. I'm not quite sure under the circumstances
19 at this late date, specifically the reasons for
20 sending it. It was either a case of various
21 literature of that period that I thought they ought
22 to be looking at. Let's see, April of '82, let me
23 just check the dates. I have to assume it was sent
24 because I thought it was data that they would want to
25 be familiar with or would like to review.

1 Q. I ask you to look down through the
2 documents. Why would it have been data that they
3 would want to review?

4 A. Why, I didn't get your question.

5 Q. Why would this have been data that they
6 would want to review?

7 A. I think the members of our industry were
8 concerned to know exactly what was being said in the
9 public arena about their product and industry.

10 Q. And so you sent this to them in an effort to
11 keep them fully informed?

12 A. I would say that probably was the case, yes,
13 unless the request may have been for these specific
14 pieces which I would tend to have.

15 Q. But you would routinely keep them informed
16 by copying them with clippings that would come to
17 your office; is that correct?

18 A. I would.

19 Q. I take it that you were not telling them
20 that the statements made in these articles were
21 necessarily true, but that they represented the
22 opinions of the people that were out there in the
23 country that were paying attention to the subject?

24 A. I have no -- I have no qualities of medical
25 expertise that would permit me to make these kinds of

1 judgments. I was simply conveying to them data that
2 was in the public arena.

3 Q. In an effort to keep them informed?

4 A. Yes.

5 Q. And is this typical of the kind of data that
6 you would frequently convey to them?

7 A. I would convey data not necessarily dealing
8 with the health question. I would convey it dealing
9 with all aspects of the industry.

10 Q. Who is Hugh Foley?

11 A. Hugh Foley at the time that I was
12 communicating with that company was the manager of, I
13 believe, corporate affairs.

14 Q. Is he a person in the company that you were
15 supposed to communicate with?

16 A. We communicated with people -- a lot of
17 people with that company, including Mr. Foley. He
18 was in the office that generally handled corporate
19 affairs and media affairs, media activity.

20 MR. BRALY: Skip to Page 58, Line 16.

21 Q. (BY MR. BRALY) Mr. Gilmartin, what was the
22 reason why you and Prudential Public Relations parted
23 ways with the Smokeless Tobacco Council?

24 A. I would respectfully suggest that that is a
25 question that might be put to the industry. The

1 industry asked for my resignation and I provided it.

2 Q. You don't have any idea or any reason why?

3 A. I have no idea.

4 Q. Did they ever suggest any reason to you?

5 A. Oh, there were a variety of things
6 discussed.

7 Q. Such as?

8 A. Oh, the question of moving to Washington,
9 which was one of the matters that was discussed.

10 Q. Any others, sir?

11 A. I believe not.

12 Q. Your basis of employment with the Smokeless
13 Tobacco Council, was that a year to year arrangement?

14 A. More or less, in the latter years I would
15 say yes. Prior to that, it was on a self-renewing
16 basis.

17 Q. When did you leave and resign from the
18 Smokeless Tobacco Council?

19 A. The 20th of June, 1984.

20 Q. Prior to that time, your service had been
21 either a year-to-year service or had been
22 periodically renewed.

23 A. In the earlier years of our relationship the
24 contract we had was self-renewing at a given point
25 during the year. In the latter years it was on a

1 year-to-year basis.

2 Q. So --

3 A. Renewable every year.

4 Q. So if the tobacco industry declined to renew
5 your contract, you were out of job then in the latter
6 years?

7 A. Not out of the a job, no longer had them as
8 an account.

9 Q. Right. There wasn't -- well, I guess what I
10 am trying to get at, there wasn't any long-term
11 commitment by them to either you or Prudential Public
12 Relations?

13 A. We signed a letter of understanding on the
14 20th of June when I signed off. Are you referring to
15 then?

16 Q. No, sir, prior to that time.

17 A. No, none whatsoever.

18 Q. So for instance, in 1983, there was no
19 long-term commitment by the industry where they had
20 to keep using you in the future; is that correct?

21 A. None whatsoever.

22 Q. And nevertheless, for whatever reasons, you
23 did resign in June of 1980, or which year?

24 A. The letter was signed on the 20th of June,
25 1984, but became effective, I believe, on the 31st of

1 March of that year.

2 MR. BRALY: 63.

3 Q. Mr. Gilmartin, a particular reference to
4 Exhibit 13-A, there is contained in there the
5 identification of a term for the cover oral tobacco,
6 and it is listed under the category of a theme. What
7 was that term that you invented to cover oral
8 tobacco?

9 A. I proposed a term called smokeless tobacco.
10 I didn't invent the words obviously. I suggested the
11 term.

12 Q. The phrase?

13 A. Yes, sir.

14 Q. When did you do that?

15 A. In 1968.

16 Q. Why did you go to work and come up with that
17 terminology of smokeless tobacco as a substitute for
18 oral tobacco?

19 A. Prior to 1968, our product mix did not
20 include chewing tobacco and in 1968 the Helme Company
21 bought out Block Brothers Tobacco Company, which was
22 basically a chewing tobacco manufacturer. And since
23 there was henceforth to be a need to promote all
24 forms of oral tobacco, I was given the assignment
25 coming up with a term and a program that could meet

1 the needs for that.

2 Q. And this was the term that you came up with,
3 the words "smokeless tobacco"?

4 A. That is correct.

5 Q. Let me hand you what has been marked as
6 Plaintiff's Exhibit 14, can you tell me what that
7 document is?

8 A. This document contains a letter which was
9 sent by myself to Jim Chapin on the 20th of June,
10 1984, under a Prudential letterhead in which I called
11 upon him to review a proposed draft release that I
12 had prepared relative to my resignation from the
13 Council and was sent to him the day that the letter
14 of agreement was executed.

15 Q. Who is Mr. Chapin?

16 A. Mr. Chapin is the senior president of the
17 United States Tobacco Company. He is also the
18 corporation's internal counsel.

19 Q. Why would you send it to him rather than to
20 the Smokeless Tobacco Council?

21 A. If memory serves, I believe Mr. Chapin at
22 that point was serving as either chairman or
23 president of the council.

24 Q. So the in-house lawyer for the United States
25 Tobacco Company was serving as best you recall as the

1 chairman of the Smokeless Tobacco Council?

2 A. To the best of my recollection, for a period
3 of time, he served as chairman of the Council, and I
4 believe it was during that period.

5 MR. BRALY: Page 70. , Line 3.

6 Q. Can you identify Plaintiff's Exhibit 17?

7 A. The document is a two-part document. It's a
8 covering letter from David Fleischer of Battle,
9 Fowler. Jaffin & Kheel of New York, who is my
10 attorney, and it is a communication from him, from
11 Mr. Fleischer, to Mr. Wayne Juchatz in which he
12 enclosed a copy of a proposed letter of understanding
13 dealing with my resignation and the resignation of
14 Prudential Public Relations, and a letter of
15 understanding that would be written between the
16 Smokeless Tobacco Council and Prudential Public
17 Relations.

18 Q. Is that the agreement, if you will, the
19 termination agreement between yourself and the
20 Smokeless Tobacco Council?

21 A. It is a draft of one of -- it is a draft of
22 the document that was under discussion at the time.
23 Whether it constitutes the final document, I'm not at
24 liberty to say without checking one against the
25 other.

1 Q. And your attorney negotiated that document
2 with the law firm of Jacob, Medinger and Finnegan?

3 A. No, again, I don't have privy to everything
4 that was discussed on it. Mr. Juchatz is an internal
5 counsel to R. J. Reynolds Tobacco Company, and I
6 suspect that these dealings were at that point, at
7 least in terms of this document, with Mr. Juchatz,
8 who was evidently was scheduled to be at Mr.
9 Finnegan's on a given date and this was sent along to
10 his attention there.

11 Q. Let me hand you what has been marked as
12 Plaintiff's Exhibit 18. Can you identify that
13 document, sir?

14 A. The document is an application for an
15 annuity with the Manufacturers Life Insurance Company
16 that was completed by the Smokeless Tobacco Council
17 and signed by myself and Mr. Chapin, who appears from
18 the document to be chairman of the Smokeless Tobacco
19 Council. I am not certain of the date, either.

20 Q. Let me hand you what has been marked as
21 Plaintiff's Exhibit 19 and ask you if you can
22 identify that collection of documents.

23 A. The documents include a covering letter from
24 Mr. Chapin from the Smokeless Tobacco Council
25 directed to myself, personally, at 31 Red Mill Road

1 in Peekskill, containing evidently this -- it refers
2 to an application. I suspect this is the
3 application.

4 Q. Are you referring to the
5 previously-identified Plaintiff's Exhibit 18?

6 A. Yes.

7 In which he called upon me to effect an
8 assessment for certain fundings from the various
9 companies of the Council to cover the costs of the
10 annuity that was described in the application.

11 Q. And the annuity was being purchased as part
12 of your termination agreement; is that correct?

13 A. It's referred to in our letter of
14 understanding and is the next thereto I think is the
15 document of the contract.

16 Q. Let me ask you to identify what has been
17 marked as Plaintiff's Exhibit 20.

18 A. The document is a letter from the United
19 States Tobacco Company to myself at my home address,
20 wherein it's requested or wherein it included a check
21 from the United States Tobacco Company, payable to
22 the Smokeless Tobacco Council to cover their pro rata
23 share of the annuity premium.

24 Q. And how much was their share of the annuity
25 premium?

1 A. In answer to your question, the amount is
2 \$123,395 and change.

3 Q. Now, what was the total amount of the price
4 to purchase this annuity?

5 A. Apparently, from the prior correspondence,
6 the numbers are \$257,074.86.

7 Q. This was an annuity that was being purchased
8 for your benefit as a result of the termination
9 agreement between yourself and the Smokeless Tobacco
10 Council?

11 A. That is correct.

12 Q. Let me hand you what has been marked as
13 Plaintiff's Exhibit 21, and ask you if you can
14 identify this document, Mr. Gilmartin.

15 A. The document is a communication from the
16 Manufacturers Life Insurance Company of Nashville,
17 Tennessee, or a Nashville, Tennessee, office to Mr.
18 Chapin, United States Tobacco Company. And it
19 relates to the annuity agreement or the annuity
20 contract, and makes reference to certain aspects of
21 the agreement, the annuity agreement.

22 Q. The annuity agreement is in fact attached;
23 is that correct?

24 A. That's correct.

25 Q. Let me see the document one moment, sir.

1 One question. This is a document that you have
2 produced from your files that you brought here with
3 you today.

4 Mr. Gilmartin, would you read to the jury
5 and tell the jury who the owner of this annuity is.

6 A. The owner of this annuity is the Smokeless
7 Tobacco Council, Inc., its successors, and assigns.

8 Q. Would you read to the jury the address that
9 they have listed?

10 A. The address listed is care of Jacob,
11 Medinger and Finnegan, Rockefeller Center, 1270
12 Avenue of the Americas, 31st floor, New York, New
13 York, 10022.

14 Q. Mr. Gilmartin, let me hand you what has been
15 marked as Plaintiff's Exhibit 22 and ask you if you
16 can identify that document?

17 A. This is a document from the Smokeless
18 Tobacco Council to Prudential Public Relations,
19 Peekskill, New York under the date of June 7, 1984.
20 And it sets forth the provisions of our letter of
21 understanding and it carries an agreed and accepted
22 date of June 20, 1984.

23 Q. And who is it signed by on behalf of the
24 Smokeless Tobacco Council?

25 A. It's signed by James W. Chapin, chairman.

1 Q. And he is also the in-house lawyer for the
2 United States Tobacco Company; is that correct?

3 A. Well, he is, yes, in a general sense. I'm
4 not sure exactly what his title is, but he is a
5 lawyer on their staff.

6 Q. Mr. Gilmartin, I hand you what has been
7 marked as Plaintiff's Exhibit 23, and ask you to
8 identify that document, please.

9 A. This is a letter from David Fleischer of
10 Battle, Fowler, Jaffin & Kheel, who are of course --
11 who is of course my attorney, and it's a
12 communication addressed to Mr. Chapin, senior
13 vice-president, U.S. Tobacco, Greenwich,
14 Connecticut. And it contains an affidavit prepared
15 in connection with the closing of our agreement.

16 Q. That affidavit is unsigned?

17 A. It is.

18 Q. Let me hand you what has been marked as
19 Plaintiff's Exhibit 24. It appears to be a copy of
20 the same affidavit that is executed. Is that what it
21 is?

22 A. It appears to be.

23 Q. And that affidavit sets forth that you have
24 sent all the files that you had over to the new
25 people in charge of the Smokeless Tobacco Council?

1 A. No. It indicates that we shipped to
2 Smokeless Tobacco Council in care of Jacob, Medinger
3 and Finnegan.

4 Q. Okay. Mr. Gilmartin, the exhibit that has
5 been marked as Plaintiff's Exhibit 22, did this
6 agreement provide that you would be, that you and/or
7 Prudential Public Relations would be paid a
8 consultants fee of \$5,000 per month for the period
9 from April to December, 1984?

10 A. Yes, it did.

11 Q. Did this agreement provide that "Neither
12 Prudential nor Gilmartin shall at any time provide
13 services or assistance as an employee, consultant,
14 volunteer or otherwise to any individual, entity,
15 group or organization which is engaged in activities
16 which are inimical or opposed to the marketing,
17 manufacture, or sale of any tobacco products"?

18 A. Yes, it did. If you -- I assume you are
19 reading from -- I don't have a copy of the document
20 in front of me.

21 Q. I hand you the document and ask you if
22 that's what I just read from Paragraph 7.

23 A. Yes.

24 Q. Keep the document. Would you read Paragraph
25 8 to the jury, please.

1 A. "Neither Prudential, nor Gilmartin, shall at
2 any time make any statement, written or oral, which
3 is disparaging or inimical to the STC, its member
4 companies or any tobacco products. The STC and its
5 member companies agree that they shall not at any
6 time make any statement, disparaging Prudential or
7 Gilmartin. Additionally, neither Prudential, nor
8 Gilmartin shall voluntarily disclose any trade
9 secrets, confidences or other information of a
10 confidential nature, i.e., not generally available to
11 the public, acquired during the course of performance
12 of services for the STC."

13 There is more to it.

14 Q. Excuse me. Yes. Go ahead and pick up where
15 you left off.

16 A. "Except for nondisparaging statements made
17 by Gilmartin or Prudential in conjunction with
18 services performed for manufacturers, distributors or
19 sellers of tobacco products, any public statement by
20 Prudential or Gilmartin concerning the STC, its
21 member companies, or any tobacco product shall be
22 approved in advance by the STC."

23 Q. You have just been reading from Paragraph 7
24 and 8; is that correct?

25 A. I read from 8. I believe you read from 7.

1 Q. Right. Would you read Paragraph 11.

2 A. "A breach by Prudential or Gilmartin of any
3 of the obligations set forth in Paragraphs 2, 3, 5,
4 6, 7, 8 or 9 shall in addition to any other remedies
5 available to the STC result in a forfeiture of all
6 amounts payable under this agreement and the annuity
7 referred to in Paragraph 10 above. It is understood
8 and agreed that the STC shall in addition to all
9 other available remedies, be entitled to injunctive
10 and other equitable relief to prevent a breach of any
11 of the provisions in Paragraphs 2, 6, 7, 8 or 9
12 above."

13 Q. Mr. Gilmartin, as a part of this agreement,
14 the Smokeless Tobacco Company purchased an annuity
15 for your benefit at a cost of \$250,000; is that
16 correct?

17 A. Yes.

18 Q. And if you under this agreement make any
19 statements that are disparaging of the tobacco
20 industry, they can take that annuity away from you;
21 is that correct?

22 A. My understanding is that I am not to make
23 any statement that would be otherwise inimical to the
24 snuff or chewing tobacco industry.

25 Q. And if you do, you would lose that \$250,000

1 annuity?

2 A. Yes.

3 MR. JENNINGS: That was not the answer.

4 THE WITNESS: I'm sorry, I read the answer.

5 MR. BRALY: Excuse me. Next page. 82. The
6 top of the page. First question.

7 Q. Is that your understanding, sir?

8 A. That would be my understanding.

9 MR. BRALY: Page 84.

10 Q. Mr. Gilmartin, to the best of your
11 knowledge, had you ever made any statements that were
12 disparaging or inimical to the Smokeless Tobacco
13 Council?

14 A. No.

15 Q. What things do you know or have knowledge of
16 about the activities of the Smokeless Tobacco Council
17 that would be so inimical or disparaging as would
18 warrant their paying you \$250,000 in the form of an
19 annuity not to talk about it?

20 A. I would again respectfully request that you
21 put that question to the persons that offered the
22 contract. I don't know.

23 MR. BRALY: Line 16.

24 Q. Mr. Gilmartin, is it your understanding that
25 they bought you a \$250,000 annuity which makes

1 periodic payments to you and that that can be taken
2 away from you if you make statements that are
3 disparaging on the Smokeless Tobacco Council?

4 A. It is my understanding in reading the
5 language of that agreement, if I were to make a
6 statement inimical to the Smokeless Tobacco Council,
7 that would be the case, yes.

8 Q. Now, sir, my next question is, what
9 knowledge or information do you have that if you
10 conveyed that to the public would be disparaging of
11 the Smokeless Tobacco Council?

12 A. Again, I would suggest that the question can
13 only be addressed to the persons who prepared and
14 proposed this agreement. I don't know. I can't
15 speak for them. I don't know what information it
16 could be.

17 Q. So far as you are concerned, you don't know
18 of anything that you might say that could have ever
19 been disparaging of the Smokeless Tobacco Council?

20 A. No, I'm afraid not.

21 Q. So this \$250,000 annuity is sort of a
22 windfall for you?

23 A. I look upon it in a rather different light,
24 counselor. I was told that this was in payment of
25 many years of faithful and productive service.

1 Q. But you had no ongoing contract, you were
2 serving at will?

3 A. That's correct.

4 Q. No further questions.

5 MR. BRALY: Your Honor, we will move the
6 admission of all of those exhibits.

7 THE COURT: Ladies and gentlemen, let's take
8 our mid-morning recess at this time. We will recess
9 for 20 minutes. You are excused. Everyone remain
10 seated while the jury exits for 20 minutes.

11 (The following proceedings were had OUT OF THE
12 PRESENCE AND HEARING OF THE JURY.)

13 THE COURT: Let's go over these exhibits,
14 gentlemen. What is the first exhibit? Plaintiff's
15 281, which is concerning funds of the Smokeless
16 Tobacco Council to the Smokeless Tobacco Research
17 Council.

18 MR. FINNEGAN: This is Deposition Exhibit 1,
19 Mr. Braly?

20 THE COURT: I don't believe so. I believe
21 it is --

22 MR. BRALY: I believe it was Deposition
23 Exhibit 3, Trial Exhibit 281. Here is the document,
24 Your Honor.

25 THE COURT: I have got it. Isn't this it?

1 MR. BRALY: Yes.

2 MR. FINNEGAN: If the Court please, we
3 object to this exhibit on the grounds that it does
4 give information about market share within the
5 Smokeless Tobacco Council. This information is
6 usually gathered by the Smokeless Tobacco Council and
7 kept out of the hands of various council members,
8 because this kind of information, of course, can't be
9 exchanged by companies. I have no objection to its
10 substance. Perhaps it could be put under some kind
11 of seal.

12 THE COURT: That would be fine. Plaintiff's
13 281 will be admitted, and make a note that it will be
14 under a protective order as trade secrets.

15 All right.

16 MR. BRALY: Your Honor, I want to point out
17 that this is all quite old data, and it can no longer
18 qualify for any trade secrets. The youngest portion
19 of this data is now five years old.

20 MR. FINNEGAN: I understand, Your Honor, --

21 MR. BRALY: It has no relevance to trade
22 secrets at this point. We would object to that.

23 THE COURT: Why do you care?

24 MR. FINNEGAN: What could be your objection,
25 Mr. Braly?

1 Well, Judge, I don't have any big thing. I
2 just don't want to be burdened with having to keep --

3 THE COURT: We are going to --

4 MR. BRALY: I know, but I have got them in
5 my files, too, you know. This is not this
6 defendant's documents. This is a document from a
7 third party that they don't have any standing.

8 THE COURT: I understand. I will sustain
9 it.

10 MR. FINNEGAN: Thank you, Your Honor.

11 THE COURT: What is next, plaintiffs? A
12 memo from Gilmartin to Foley about reports from
13 medical journals; is that --

14 THE CLERK: Deposition 4.

15 THE COURT: Exhibit 4. What is that trial
16 number on that?

17 MR. BRALY: I don't have one on that one,
18 Your Honor. Let me get you one. I only offered
19 to -- offer 2 until I read it. Then I decided I
20 would be better off with some more.

21 My efficient secretary beat me to that,
22 Judge. Exhibit 4?

23 THE COURT: Yes.

24 MR. BRALY: Trial Exhibit 282. This is one
25 they wanted in, Your Honor.

1 THE COURT: Any objection to 282?

2 MR. FINNEGAN: No.

3 THE COURT: All right. A letter of
4 resignation, I believe, is next. That is what I have
5 it --

6 THE CLERK: Yes.

7 THE COURT: -- noted as.

8 MR. BRALY: The exhibit number --

9 THE CLERK: Deposition 17.

10 MR. FINNEGAN: It is Plaintiff's 17?

11 THE CLERK: Yes.

12 MR. BRALY: Okay. Trial Exhibit 296. Any
13 objection to that?

14 MR. FINNEGAN: Well, if the Court please, we
15 are not here representing Mr. Gilmartin. This
16 document represents to events that took place after
17 the death of Sean Marsee. This document sets forth
18 his agreement of separation from the Smokeless
19 Tobacco Council. I think counsel has made the points
20 in the deposition. I really don't --

21 THE COURT: What is the relevance of the
22 document?

23 MR. BRALY: Judge, in effect, what they have
24 done is at a cost of \$250,000 have purchased the
25 silence of an extremely knowledgeable person, and

1 they spent more money in purchasing his silence than
2 what they spent on medical research during the
3 four-year period of time that the man testified to.

4 I think the documents clearly state that
5 they are going to be highly relevant to the jury's
6 interpretation of any claim of independent scientific
7 research that was done by the Smokeless Tobacco
8 Council.

9 MR. FINNEGAN: If the Court please, I think
10 that point was made by counsel in his examination of
11 this witness in terms of what amounts were paid, the
12 separation, separating Mr. Gilmartin from the
13 Smokeless Tobacco Council, and again we are not
14 representing Mr. Gilmartin here, but I really don't
15 think that this is fair to Mr. Gilmartin to put all
16 of this out into the public domain, Your Honor.

17 THE COURT: Overruled. I will admit 296.

18 Next is a letter from David Fleischer.

19 MR. BRALY: What is the trial exhibit
20 number?

21 THE CLERK: 18.

22 THE COURT: What number?

23 THE CLERK: 18 was the deposition number.

24 MR. BRALY: Yes, Trial Exhibit 297.

25 Deposition Exhibit No. 18 I have as the application

1 for the annuity policy.

2 THE CLERK: Yes.

3 THE COURT: I will sustain that. There is
4 no reason to have it.

5 Is there any reason for the annuity itself
6 to be in there?

7 MR. BRALY: Well, yes, there is, Judge. The
8 Smokeless Tobacco Council is going to try and claim
9 that they are an independent scientific organization.

10 MR. FINNEGAN: That the what is -- I'm
11 sorry.

12 MR. BRALY: The Smokeless Tobacco Council,
13 and they have claimed that through the years, and
14 what this shows is that when the Smokeless Tobacco
15 Council got ready to do something, that they did it
16 through their law firm of Jacob, Medinger and
17 Finnegan, and we suggest it shows that as the address
18 of the owner of the policy Jacob, Medinger and
19 Finnegan --

20 THE COURT: That point was made in the
21 deposition. I will sustain the objection. What is
22 the number thereafter?

23 MR. BRALY: Trial Exhibit 297.

24 THE COURT: Okay, 297 sustained objection.

25 MR. FINNEGAN: If the Court please, may I

1 ask if the Court would consider with regard to 296
2 putting that under a protective order, letting it be
3 used for the purposes of this case. I am talking
4 about Mr. Gilmartin's separation agreement.

5 Again, I'm not representing Mr. Gilmartin,
6 but I just feel that it is really unfair to have it
7 sort of out there in the public domain. If it is
8 relevant for the purposes of this case, then that's
9 one thing.

10 THE COURT: I don't have any problem with
11 that.

12 MR. FINNEGAN: Thank you, Your Honor.

13 MR. BRALY: Note our objection, Your Honor.

14 THE COURT: Letter of resignation, 296 would
15 be under seal.

16 THE CLERK: Okay.

17 MR. FINNEGAN: Thank you.

18 THE COURT: There is no reason to embarrass
19 somebody.

20 MR. BRALY: Your Honor, the person that it
21 was sent to was not embarrassed by it. The only
22 people it embarrasses is the United States Tobacco
23 Company.

24 THE COURT: Well, the jury will have the
25 opportunity to assess that.

1 MR. BRALY: Your Honor, -- Okay.

2 THE COURT: Next is the application for
3 annuity. Is that number --

4 THE CLERK: No, that was --

5 THE COURT: Is that the one we just dealt
6 with?

7 THE CLERK: Yes.

8 MR. FINNEGAN: You are looking at 19 now?

9 THE CLERK: The next one is Deposition 19
10 from Chapin to Gilmartin.

11 MR. BRALY: Your Honor, 19?

12 THE CLERK: Yes. You should probably be
13 298.

14 MR. FINNEGAN: If the Court please, I
15 believe that Plaintiff's Deposition Exhibit 19 does
16 nothing more than implement the separation agreement
17 and specifically sets out what each company's
18 percentage of the cost of the annuity will be.

19 THE COURT: What does that add, Mr. Braly?

20 MR. BRALY: I haven't found it.

21 MR. FINNEGAN: I would also like to call to
22 the Court's attention, these percentages bear upon
23 the market share in 1984, which is not really that
24 long ago.

25 MR. BRALY: What deposition exhibit did

1 somebody say?

2 MR. FINNEGAN: 19, Mr. Braly.

3 THE COURT: 19. Here it is right here.

4 MR. BRALY: I have seen the document. Well,
5 it is the documentary evidence that establishes the
6 \$257,000.

7 THE COURT: All right. I will admit
8 Plaintiff's -- What is the number? 298?

9 MR. FINNEGAN: Yes, Your Honor.

10 THE COURT: And that will be sealed, also.

11 MR. FINNEGAN: Thank you, Your Honor.

12 THE COURT: 20.

13 MR. FINNEGAN: Under the Court's ruling I
14 assume that you are going to admit that. We would,
15 therefore, --

16 THE COURT: We have already set forth --
17 Isn't that just duplicative --

18 MR. FINNEGAN: Yes, Your Honor.

19 THE COURT: -- of 19? 20 just sets forth
20 what U.S. Tobacco's share is. It is already set
21 forth in 19.

22 MR. BRALY: Let me see the document, Your
23 Honor.

24 THE COURT: It's a letter to --

25 (Handed to counsel).

1 THE CLERK: Gilmartin.

2 MR. BRALY: Well, the U.S. Tobacco's share
3 was not --

4 THE COURT: Yes, it is right there.

5 MR. BRALY: Okay. In the attachment to the
6 document. In the attachment to the previous
7 document?

8 THE COURT: Yes.

9 MR. BRALY: Let me see the first page of the
10 document.

11 (Handed to counsel).

12 MR. BRALY: Okay. I don't have any
13 objection.

14 THE COURT: Is that 299?

15 THE CLERK: I would think that would be the
16 next number. He doesn't have it, I don't think, but
17 it is the next one.

18 MR. BRALY: We got out of sequence here just
19 a moment ago, Judge. We need to get them collected
20 back.

21 THE CLERK: Are we not admitting it?

22 THE COURT: No. That will be 299, I guess.
23 Objection will be sustained to 299.

24 Okay. Next is --

25 THE CLERK: 21. Deposition 21.

1 THE COURT: That is a letter from.
2 Manufacturers Life Insurance. Any objection to that?

3 MR. FINNEGAN: Well, our same objection, but
4 I am assuming the Court is going to admit this. If
5 so, I would again ask that it just be put under
6 seal.

7 THE COURT: What is the necessity of putting
8 it under seal?

9 MR. FINNEGAN: Well, I withdraw that, Your
10 Honor. I don't think -- well, it does give his
11 monthly payments. I mean --

12 THE COURT: I don't see any reason.
13 That's --

14 MR. BRALY: You are talking about 291?

15 THE COURT: I think it is 300, I believe,
16 that right there.

17 MR. BRALY: Okay.

18 THE COURT: I will admit it.

19 And a letter of understanding, is that
20 Plaintiff's 22?

21 THE CLERK: Yes.

22 THE COURT: Is that 301? You object to 301?

23 MR. FINNEGAN: We have no objection on it,
24 Your Honor, except this again sets forth all of the
25 financial commitments back and forth, and we would

1 ask that this be treated the same way as the
2 agreement.

3 THE COURT: Why? What would be the point of
4 it being under seal?

5 MR. FINNEGAN: Well, Your Honor, this sets
6 out how much the man is going to be making. It sets
7 out financial income --

8 THE COURT: I don't see anything
9 embarrassing about that. 301 will be admitted.

10 Letter from Fleischer to --

11 MR. FINNEGAN: If the Court please, I didn't
12 really suggest that it was a matter of
13 embarrassment. I was just really trying to raise a
14 point that a person who is not really a member of a
15 party to this lawsuit, that is a peripheral person,
16 retired trade association executive, should not have
17 his financial affairs in the public domain, Your
18 Honor. That was really what --

19 THE COURT: I understand.

20 MR. FINNEGAN: Thank you.

21 THE COURT: 32, what is 32?

22 THE CLERK: A letter from Fleischer to the
23 tobacco company.

24 THE COURT: Fleischer is in.

25 MR. BRALY: The next one is signed. There

1 is no need to have both of them.

2 THE COURT: What is the point of it?

3 MR. BRALY: I will withdraw that exhibit,
4 Your Honor.

5 THE COURT: All right. Okay. I believe
6 that's it, isn't it? Okay.

7 We will be in recess.

8 (A brief recess was here had.)

9 THE COURT: Be seated. Call your next
10 witness.

11 MS. DESCHAMPS-BRALY: The plaintiff would
12 call Mr. Walt Garrison as an adverse witness. Called
13 as an adverse witness on behalf of the plaintiff,
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BRALY:

17 Q. Would you state your full name, please.

18 A. Walter Benton Garrison.

19 Q. And where do you reside, Mr. Garrison?

20 A. [DELETED]

21 Q. How old are you?

22 A. I am 41.

23 Q. Are you married?

24 A. No, I was. Excuse me, it hasn't been that
25 long ago, no.

1 Q. Do you have children?

2 A. Two boys.

3 Q. And how old are they?

4 A. 17 and 12.

5 Q. Are you an employee of the United States
6 Tobacco Company?

7 A. Yes, ma'am.

8 Q. When did you go to work for the company full
9 time?

10 A. September, 1975.

11 Q. What position do you now hold with the
12 company?

13 A. Vice-president, director of sales,
14 Southwest.

15 Q. And could you give the Court and the jury
16 some idea of what your duties are in that position?

17 A. As director of sales, I am in charge of
18 Region 3, which is eight states and part of three
19 other ones, from Texas as far North as Nebraska, as
20 far east as Louisiana, west to New Mexico.

21 Q. Have you been designated as the company's
22 representative to sit at the defense table for the
23 entire trial?

24 A. Yes, ma'am.

25 Q. How much do you earn per year in your

1 position as an employee of the U.S. Tobacco Company?

2 A. 110,000.

3 Q. Does that include residuals from commercials
4 and so forth?

5 A. The commercials I do are not on a residual
6 basis. They are on a buyout basis.

7 Q. What does that mean?

8 A. As plainly as I can put it, when you belong
9 to the AFTA, which is the American Federation of
10 Television and Radio Artists to SAGS, which is Screen
11 Actors Guild, my case is different because I am an
12 employee of the company. I have a contract with them
13 to do commercials which is a buyout. If I were, say,
14 I don't know, a model or an actor that did a
15 commercial, they would get paid an up-front fee or a
16 production fee, plus then they would get -- every
17 time the commercial is shown, they would get a
18 residual fee. And it is up to, like, the Screen
19 Actors Guild or AFTA to keep up with how many times
20 those are shown, but mine is not like that; I am paid
21 on a yearly basis for doing commercials.

22 Q. So that is all included in your \$110,000?

23 A. No, ma'am. It's a different contract. The
24 people that have done the commercials for us in the
25 past each one of them have a different contract.

1 Q. Do you have any idea how much you average in
2 a given year between your base salary and your
3 commercials?

4 A. Probably a little over 200,000.

5 Q. Do you or any members of your family own any
6 shares of stock in the United States Tobacco Company?

7 A. I do. Well, I don't own them, I am paying
8 for them.

9 Q. How many shares do you own?

10 A. Right now I am paying on 500 shares.

11 Q. Mr. Garrison, were you involved in sports in
12 high school?

13 A. Yes, ma'am.

14 Q. Did you play football?

15 A. Yes, ma'am, and well, every other sport they
16 had.

17 Q. Did you play basketball?

18 A. Yes, ma'am.

19 Q. Did you play baseball?

20 A. Yes, ma'am.

21 Q. Did you run track?

22 A. Yes, ma'am.

23 Q. Did you do some rodeo?

24 A. In high school, yes, yes, -- well, not
25 during the school year, most of that was in -- well,

1 the latter part of the school year, when all the
2 sports were over.

3 Q. Did you start playing football before you
4 were in high school?

5 A. Well, junior high. 7th grade.

6 Q. Did you start playing baseball in junior
7 high?

8 A. Well, actually, in little league.

9 Q. Did you start running track before you were
10 in high school?

11 A. I think there again it would be the 7th
12 grade. I think that is when as they started in
13 sports in Louisville.

14 Q. Let me ask you this. Were there any
15 professional athletes out there in the world that you
16 particularly admired when you were in grade and junior
17 high school?

18 A. Yes, ma'am.

19 Q. Who were some of those?

20 A. Jim Shoulders was probably my favorite.

21 Q. Who was he?

22 A. He was at that time the world champion all
23 around cowboy and Dean Oliver, he was a world
24 champion calf roper.

25 Q. Does rodeo happen to be your favorite thing

1 back then?

2 A. Yes.

3 Q. Did you play football in college?

4 A. Yes, ma'am.

5 Q. Were you drafted into the pros?

6 A. Yes, ma'am.

7 Q. What year was that?

8 A. Which one?

9 Q. The year that you were drafted.

10 A. Oh, '60 -- I was drafted in '65.

11 Q. What team drafted you?

12 A. The Dallas Cowboys.

13 Q. What position did you play for them?

14 A. Running back.

15 Q. How long did you play for the Dallas

16 Cowboys?

17 A. Nine years.

18 Q. They were a pretty good football team,

19 weren't they?

20 A. Yes, ma'am.

21 Q. The cowboys football games were frequently

22 shown on television?

23 A. I never got to see any of them, but I heard

24 they were.

25 Q. Would you take my word for him --

1 A. Yes, sir.

2 Q. -- if I said they were?

3 A. I would.

4 Q. You played for the Dallas Cowboys from 1966
5 through 1974; is that correct?

6 A. '74 was the last year, yes, ma'am.

7 Q. That was your last season?

8 A. Yes, ma'am.

9 Q. During the years that you played for the
10 Dallas Cowboys, your name became a familiar word to
11 sports fans, would you say?

12 A. Probably the last -- about the last six
13 years. The first three they didn't know who I was.
14 I was sitting on the bench.

15 Q. You worked your way up?

16 A. I was sitting on the bench quite a bit.

17 Q. I imagine that you were proud of your skill
18 on the football field, weren't you?

19 A. I was -- I was proud to be a part of the
20 Dallas Cowboys and a winning team, yes, ma'am.

21 Q. Also, I imagine you must have been proud of
22 the fact that you were admired and respected by a lot
23 of the sports fans out in the audience.

24 A. I think everyone likes to be looked up to.

25 Q. I agree with you. Would you have been proud

1 to know that many of those people that were looking
2 up to you were young boys?

3 A. Yes.

4 Q. Mr. Garrison, when did you first do a
5 television commercial for the United States Tobacco
6 Company?

7 A. I believe it was in June of 1972, August --
8 yes, I think it was June. I was trying to remember
9 the exact month, but I think it was June of '72.

10 Q. June of 1972?

11 A. (Nodding yes).

12 Q. You were still playing for the Cowboys at
13 that time?

14 A. Yes.

15 Q. When you started advertising for the
16 defendant in 1972, did you have any knowledge of any
17 health problems that might arise from the use of
18 snuff?

19 A. No, ma'am.

20 Q. Now, that was in 1972, correct?

21 A. Yes.

22 Q. In 1973, did anybody from United States
23 Tobacco advise you that your snuff contained any
24 substance that was causing cancer in laboratory
25 animals?

1 A. No, ma'am.

2 Q. In 1974, did anybody from U.S. Tobacco
3 provide you with any information?

4 A. No, ma'am.

5 Q. In 1975, did they give you that information?

6 A. No.

7 Q. In 1976, did United States Tobacco Company
8 tell you that?

9 A. No, ma'am.

10 Q. When did someone from United States Tobacco
11 tell you that there was some chemical in their snuff
12 that was causing cancer in laboratory animals?

13 A. I'm not sure that's exactly what they told
14 me. In the late Seventies, after I had -- after I
15 finally got my own office and they had someplace to
16 send literature and get ahold of me, they sent the
17 booklet that they sent to all the people in the sales
18 force at that time concerning smokeless tobacco and
19 health --

20 Q. What year was that, again?

21 A. '77, '78, somewhere in there, late
22 Seventies.

23 Q. Excuse me, I didn't mean to interrupt you.

24 A. No, late Seventies.

25 Q. When were you told that United States

1 Tobacco products sold in Sweden had to carry a
2 warning label by regulation of the Swedish
3 government?

4 A. I think probably last year, as near as I can
5 remember, last year, year before that.

6 Q. Now, sir, you remember when your deposition
7 was taken on April 16th of this year?

8 A. Yes.

9 Q. On Page 81 of that deposition, you said that
10 you were aware that there was a health controversy;
11 is that correct?

12 A. Yes.

13 Q. Approximately when did you come to the
14 realization of what you call the health controversy?

15 A. Well, I said I was aware that there was a
16 health controversy. I am still not, you know, -- I
17 mean personally --

18 Q. I understand what you are saying. What I am
19 asking you --

20 A. When was I first aware of --

21 Q. When were you first -- Yes.

22 A. Mid-Seventies, I would say.

23 Q. Were you still making commercials for the
24 United States Tobacco Company in 1985?

25 A. I think the last one we did was '84. I'm

1 not real sure. There was a log rolling one, whenever
2 that was.

3 Q. And you are still an employee of the United
4 States Tobacco Company selling their snuff?

5 A. Yes, ma'am.

6 Q. Is that correct?

7 A. (Nodding yes).

8 Q. Mr. Garrison, do you know what a spit pit
9 is?

10 A. Do what?

11 Q. A spit pit.

12 A. Oddly enough, I have heard that word, and I
13 think -- I'm not sure, I think there is a guy sold
14 some -- I think their spittoons or something.

15 Q. Let me show you something --

16 A. I think they are, --

17 Q. -- see if they refresh your memory.

18 MS. DESCHAMPS-BRALY: May I approach the
19 witness, Your Honor.

20 Q. (BY MS. DESCHAMPS-BRALY) You know what this
21 is?

22 A. Pardon me? It's a spittoon, just like I
23 said.

24 Q. Could you show us how this works?

25 A. I have never had one of these particular

1 ones. How does it work?

2 Q. Yes. You just expectorate in there?

3 A. I mean -- You want me to spit in there?

4 Q. That you spit --

5 A. Yes, you want me to spit in there?

6 Q. Yes if you have Skoal in your mouth mouth.

7 A. No.

8 Q. In that case don't spit, no.

9 A. It's a cuspidor, a spittoon.

10 Q. Mr. Garrison, let me show you what has been
11 admitted into evidence as Plaintiff's Exhibit 48-I.
12 Would you take a look at that, please.

13 A. Yes.

14 Q. Do you see that young boy standing there in
15 front of the U.S. Tobacco booth?

16 A. Yes.

17 Q. Could you tell me what he is holding in his
18 hand?

19 A. I have no idea. It looks like a coffee cup
20 or -- no it looks more like a coffee cup to me.

21 Q. Thank you, sir.

22 MS. DESCHAMPS-BRALY: Your Honor may I
23 publish this to the jury.

24 THE COURT: Is this in evidence?

25 MS. DESCHAMPS-BRALY: This one already is.

1 THE COURT: Yes, ma'am.

2 Q. (BY MS. DESCHAMPS-BRALY) Mr. Garrison, with
3 the Court's permission, I have in my hand -- Would
4 you identify what this is?

5 A. It looks like a can of Copenhagen Snuff.

6 Q. Would you read the back, when it was made,
7 please?

8 A. April 28th, 1986.

9 Q. Would you be kind enough to open this can so
10 that the jury may see and smell what the product in
11 this particular case that is in issue is like.

12 A. Okay. Can I get my knife out?

13 Q. You sure may.

14 A. (Witness complies).

15 MS. DESCHAMPS-BRALY: Your Honor, may I pass
16 this around to the jury?

17 THE COURT: (Nodding yes) Go ahead.

18 Q. (BY MS. DESCHAMPS-BRALY) Mr. Garrison, at
19 Pages 101 and 102 of your deposition, you stated your
20 personal feeling that a warning on snuff was not
21 needed.

22 A. Yes, ma'am.

23 Q. After hearing all the testimony in this
24 courtroom, including the finding by the Surgeon
25 General of the United States, is that still your

1 opinion here today?

2 A. Yes, ma'am. You know, I have been dipping
3 snuff for 22 years now, Mrs. Braly, and personally if
4 I thought there was anything about the product that
5 would do me harm, I mean I have got a college
6 education, I wouldn't dip it. And so I would have to
7 say, "no." It hasn't changed my mind whatsoever.

8 MS. DESCHAMPS-BRALY: No further questions,
9 Mr. Garrison.

10 THE COURT: Cross-examine.

11 CROSS EXAMINATION

12 BY MR. COATS:

13 Q. Mr. Garrison, how is snuff sold? What are
14 the procedures for marketing, say selling snuff.

15 MS. DESCHAMPS-BRALY: Objection Your Honor,
16 this is outside the scope of direct examination.

17 THE COURT: I'm sorry, I was talking to her,
18 I didn't hear the question. What was the question?

19 MR. BRALY: The question, how they go about
20 selling snuff.

21 THE COURT: Overruled.

22 THE WITNESS: I don't know --

23 THE COURT: Go ahead.

24 THE WITNESS: Yes.

25 The U.S. Tobacco Company sells to

1 distributors, wholesalers and they, in turn,
2 distribute to different retail accounts that they
3 have.

4 Q. Well, what I am getting at does U.S. Tobacco
5 sell directly to the public?

6 A. No.

7 Q. What do you do? How do you go about doing
8 what you do? If you don't sell it, what do you do?

9 A. As I said, we have got -- well, in Region 3
10 that I am in charge of is three different
11 departments, there's a lot of division managers and
12 consumer marketing reps under them and their job is
13 to -- well, the division manager, the department
14 managers sell to distributors. Most of our
15 distributors are on what we call direct, which is a
16 computer setup whereby they have a standing order
17 each week of how much of our product the Copenhagen,
18 the Skoal and the rest of it that they buy for their
19 distributorship.

20 Q. All right. And so then the product is
21 delivered to the retailers who then sell to the
22 public?

23 A. Well, they, yes, they sell to the different
24 stores, and the stores sell to the public.

25 Q. Okay. Whom do your sales people call on?

1 A. Most of the time they call on the division
2 department managers call the on our distributors --
3 the wholesalers. Our Consumer Marketing Reps, the
4 CMR's, some of them -- well most of them call on
5 distributors. All of them call on retail accounts to
6 make sure the product is being rotated properly to
7 make sure vendors are in place, point of sale of
8 material and that kind of stuff is up in the store.

9 Q. All right, sir. Are you involved in the
10 sampling of your products?

11 A. Yes, sir.

12 MS. DESCHAMPS-BRALY: The same objection, it
13 is outside the scope of direct.

14 THE COURT: Overruled.

15 A. Not as much the past year-and-a-half, two
16 years, as I have been in the past.

17 Q. (BY MR. COATS) Will you tell us what's
18 involved in sampling? What does that mean?

19 A. Sampling is handing out free product or a
20 portion -- I mean we have got sample packs of our
21 products that we give at different events, special
22 promotions, special events around the country.

23 Q. For example, what kind of events are you
24 talking about?

25 A. Well, world champion your quarter horse show

1 in Oklahoma City comes to mind because we are right
2 here. This past weekend we were at a rodeo in Fort
3 Worth. We do ski events; we do car races; we have
4 done some golf events. In fact, in Tulsa, different
5 events where the events we are looking for are events
6 that attract a lot of people that are really not in a
7 fast pace where you can visit with them and it's
8 events basically male-oriented events, really,
9 sporting events, whether they are horse oriented
10 events or -- cause I look at horse events as being
11 sporting events, also.

12 Q. What do you do? Just describe the process,
13 if you will.

14 A. Well, most of the time we have a booth. A
15 lot of times we don't. This is just like world
16 championship quarter horse show. We have got a booth
17 there, have a booth there, people come by. We offer
18 them a sample of the product, show them how to use
19 it. All these people have to be 18 or over, though.

20 Q. All right. Let's talk about that a minute.
21 Now, you know, you have heard evidence that there are
22 people who are younger than that who have gotten a
23 sample of your product. But what is it you try to
24 do? Tell us what your experience has been in terms
25 of people 18 or under?

1 A. Well, the company, like I say, ever since I
2 have worked for the company, I have heard, you know,
3 people in the company say ever since 1936, I don't
4 know anything about that, as long as I have worked
5 for the company, there's been a strict sampling
6 policy that no one under 18 years of age is given a
7 sample of the product. Everyone that works for U.S.
8 Tobacco signs a release form that they won't sample
9 anyone under 18, basically, what it says, there's a
10 lot of other stipulations in there, but basically
11 that's the gist of it.

12 Q. But how do you know, somebody walks up to if
13 they are 18 or not? It is pretty hard to tell.

14 A. When I was a little younger I could tell,
15 now that I am getting a little older, it is hard for
16 me to tell exactly which one is 18 and which one is
17 not, but if there is a question, I mean I ask people,
18 you know, how old are you? And if there is a
19 question, I ask them to show me some identification
20 and all the people that work for me are instructed to
21 do that. And when you think about how much snuff
22 costs now days, it is really not an inconvenience for
23 some of the people -- or most of the people to show
24 an I.D. in order to receive a free sample.

25 Q. How much does snuff cost?

1 A. Depending on state taxes, Oklahoma just had
2 an increase last year or this year, I guess, so it
3 depends on -- I am going to say anywhere between 90
4 cents and a dollar sixty-five.

5 Q. All right. Now, there is no way that you
6 can tell us, I suppose, one way or the other whether
7 it laps, whether young people are handed samples or
8 whether they are not in your experience.

9 A. Well, I have seen a couple of people that
10 we -- we used to hire, and we still do, use part-time
11 people at some of the bigger events, and I have
12 terminated a couple of those people for sampling
13 people under 18, that I knew were under 18. I mean
14 you could tell, they looked under 18.

15 Q. All right. What about your sampling of
16 Copenhagen?

17 A. We don't sample Copenhagen.

18 Q. Well, explain that to the jury. That
19 doesn't mean, what do you mean you don't sample
20 Copenhagen, one of your plain products?

21 A. Copenhagen has been around since 1822, it is
22 the largest selling snuff product in the United
23 States. It's, like I said, the oldest product we
24 have, it's the No. 1 selling brand in the United
25 States. The reason you sample a product is basically

1 it is a new product, when you sample. You want to
2 introduce a new product to the public by sampling so
3 that they can taste a new product. Copenhagen, I
4 mean all you are doing is feeding current consumers
5 whenever you sample Copenhagen, because I mean it's
6 the No. 1 brand. The same with Skoal, you know.
7 That's also a very popular product we have. Now, the
8 other products are the ones we sample, the Happy
9 Days, a product that is not really selling or a
10 product that is new is the ones you sample.

11 Q. All right. Well, obviously, on occasion
12 somebody has been getting a can of Copenhagen?

13 A. Well, there's always, take the college
14 rodeos, which is a good example of that or the world
15 championship quarter horse show, the contestants at
16 college rodeo, most of them use either Copenhagen or
17 Skoal. Now, when our sales force or our sales
18 promotion force goes to a college rodeo or the world
19 show, we can take the world show as an example. I
20 mean there's people that ride the horses at the world
21 show, some of the trainers, some of the people with
22 American quarter horse show, we know use Copenhagen
23 and Skoal. Now to the general public, we will sample
24 Happy Days or one of the our other products, but some
25 of these people they would come by and, you know, we

1 carried it to be nice to those people around the show
2 or the contestants at college rodeo.

3 Q. Let's just talk a minute about the college
4 rodeo. What is the college rodeo program and how has
5 United States Tobacco Company been involved in it?

6 A. The NIRA, National Intercollegiate Rodeo
7 Association, we became involved, I think this is our
8 12th year, that we have been involved with the
9 National Intercollegiate Rodeo Association. It
10 started in the fall of '74, I think, with a
11 scholarship awards program, whereby we gave athletic
12 scholarships to contestants who won events either at
13 regional levels or at national levels.

14 Q. Whose permission do you get before you can
15 be involved in those rodeos?

16 A. Well, the National Intercollegiate Rodeo
17 Association sanctions all rodeos within the
18 colleges. I mean any school that has a rodeo has to
19 be sanctioned by the National Intercollegiate Rodeo
20 Association. Our contract is with the NIRA and not
21 with -- we don't sponsor rodeos, as such. We sponsor
22 the scholarship program through the NIRA. The NIRA
23 are the ones that gives the sanctions to the
24 different schools.

25 Q. All right. I guess I don't understand. Who

1 are the contestants at these rodeos?

2 A. Contestants are -- well, there's different
3 regions in college rodeo. Like conferences in
4 football, there's regions in rodeo.

5 Q. But are the participants in college rodeo
6 like the player in college football, I mean they are
7 college students?

8 A. They are college students; they have been
9 through college. Excuse me, I didn't understand your
10 question. They have to be in college, they have to
11 be enrolled and passing at that -- whatever school
12 they are attending.

13 Q. So these colleges have teams, rodeo teams?

14 A. Yes.

15 Q. Is that what happens?

16 A. (Nodding yes).

17 Q. All right. There's probably 200 -- I used
18 to know the exact number, 214 schools that
19 participate in college rodeo. There is probably a
20 hundred of them have their own rodeo. I mean like
21 Oklahoma State University has their own rodeos,
22 Oklahoma State Rodeo.

23 Q. Now, do you make an appearance, does United
24 States Tobacco have an appearance at some of these
25 rodeos?

1 A. Oh, yes.

2 Q. In what form?

3 A. I used to, before -- when I was involved
4 with special events or sales promotion, instead of
5 sales, which was like two years ago, in fact, well,
6 from '74 through what, '85, '84, whatever that is, we
7 went to most all the college -- we go to 30 of them a
8 year, 35 a year. We had the scholarship program of
9 course that we gave the money, but the money wasn't
10 given, the scholarships weren't given until the end
11 of the year, so we would go and promote the rodeo, go
12 in a couple days early, work with their publicity
13 team, show them how to set up press interviews, press
14 parties, that kind of stuff.

15 Q. All right. And that was to attract people
16 to come to the rodeos?

17 A. Right.

18 Q. Now, did you have to get permission of the
19 colleges before you could participate in that in that
20 way?

21 A. Well, you had to get permission -- well, all
22 the advisers, which are rodeo advisers which are like
23 football coaches, most of them are teachers; I am
24 going to say all of them are teachers or with the
25 universities. As far as doing press, no, I mean you

1 didn't have to get any kind of release from the
2 university to go to a newspaper or radio station.

3 Q. I didn't ask the question well. When you
4 actually have a physical presence at the rodeo, do
5 you have to get somebody's permission to do that?

6 A. Well, I don't exactly know again what you
7 are talking about. But if we were going to sample at
8 the rodeo, you have to get the permission of the
9 college. If -- I mean just to attend the rodeo,
10 anybody could attend a rodeo.

11 Q. All right. Have you had colleges that said
12 they didn't want you to come and sample?

13 A. Yes, oh, yes.

14 Q. Which ones?

15 A. Well, all of them in Utah, if the Mormons
16 out there, you know. There's one other one I can
17 think of is Cal Poly, San Luis Obispo, California,
18 which we were allowed to sample for a couple of years
19 and then not.

20 Q. Do you know why they stopped?

21 A. Yes. Because we would call them because,
22 you know, I mean we had it set up and all of a sudden
23 they called us back and they said you can't hang
24 banners in the arena and you can't sample. And the
25 explanation they gave was the fact that Miller beer

1 who had just become a sponsor of the Intercollegiate
2 Rodeo Association, they did have a campus policy or a
3 school policy about beer, advertising beer signs on
4 campus, Miller also, they were putting some money in
5 the college rodeo, also, so they wanted to hang their
6 banners on -- inside the arena, which was on the
7 campus, the school said no, we have got a policy that
8 we can't. And they said well, what about the U.S.
9 Tobacco? You know, they have been here the last two
10 or three years. They said well, we are cutting out
11 all sponsors as far as advertising at the rodeo. So
12 we weren't able to do that.

13 Q. All right. Other than Utah and San Luis
14 Obispo, have you had problems with college people or
15 college officials in having you come from college
16 rodeos and sampling?

17 A. No that's the only one I can think of.

18 Q. When you were sampling have you had a
19 situation involving where young people wanted a
20 product, parents were with them, they will go get
21 their parents or something of that kind?

22 A. Yes.

23 Q. Tell us about those kind of experiences?

24 A. Well, I mean at the world show here, you
25 have kids coming by and wanting the product, and you

1 tell them, "hey, you are not 18." I mean, you know,
2 you can -- obviously a kid that is 14 or 15 -- you
3 can tell is not 18, and we tell them you can't, you
4 know, we can't give you any snuff, because, you know,
5 you are under age. Eighteen is the law. What is the
6 law now in Oklahoma, 21? They just passed one or
7 something like that.

8 Anyway, they said well, I have been dipping,
9 you know, for a couple of years, you know. And I
10 said "Well, is your father with you?" He said,
11 "yes." So they go get their father and father, you
12 know, comes asks me for a can of snuff. I give him a
13 can of snuff.

14 Q. All right.

15 A. I mean -- still believe that there's some
16 kind of parental guidance in this world on what kids
17 do.

18 Q. Okay. Now, do you have an active -- when
19 you are at the booths and you are doing this
20 sampling, do you have the booths manned? Do you have
21 somebody there?

22 A. Oh, yes.

23 Q. All right.

24 A. I mean there's always an employee of U. S.
25 Tobacco at the booths.

1 Q. Now, they showed you some pictures, let me
2 see if I can find those.

3 Let me hand you what have been admitted in
4 evidence as 48-I and 48-something else, H, I guess.

5 THE CLERK: Yes.

6 Q. (BY MR. COATS) And look at those pictures
7 and see if you can tell us where those were.

8 A. Yes, this is the world championship quarter
9 horse show.

10 Q. That is here in Oklahoma City?

11 A. Yes.

12 Q. All right. I notice that there's -- that
13 there's a sign on one of them there that says no --
14 have to be 18 years old or something like that?

15 A. "Must be 18 years old, no exceptions, free
16 samples."

17 Q. All right. Do you have signs like that
18 regularly at your rodeos or not?

19 A. Yes. Well, the last couple-three years we
20 have.

21 Q. All right. Now, there you got one with and
22 one without.

23 A. Yes.

24 Q. Can you explain that?

25 A. It's two different years.

1 Q. How do you know it is two different years?

2 A. Well, the horse trailer is different for one
3 thing. This big horse trailer is a different color
4 in this picture than it is in this picture. And the
5 backdrop is different.

6 Q. You can change the backdrop I suppose,
7 couldn't you?

8 A. Well, you couldn't move this horse trailer.

9 Q. What about the backdrop, do you periodically
10 change the backdrop during the time that the show is
11 going on?

12 A. No, not during the world show. I mean
13 the -- we give away what is called the Copenhagen
14 Skoal Superhorse of the year award and that blanket
15 hangs in the back of our booth for the entire show
16 and there is a trophy that we give that is over here
17 on this table and it hangs there until Saturday
18 afternoon, because they give it that night.

19 Q. So that could be that they took the picture
20 one time and then they took another one later or
21 something at the same show?

22 A. These two?

23 Q. Yes, sir.

24 A. No. These two, they are different horse
25 trailers and they don't -- you can't get a horse

1 trailer in and out of there once the show starts.
2 They have to set up two days before this travel --
3 travel and transportation building opens, I mean you
4 can't move. I mean you can't move anything out
5 there.

6 Q. Can you tell what years those are by looking
7 at them?

8 A. Well, I know this one is 1984, because it
9 says so on the cooler. I don't know what this one
10 is. Well, it has to be after '83, '83 or after
11 because that is a Skoal Bandit banner in the back, so
12 it is '83. Because the last time we were in a
13 different location than these two. So this is '83
14 and this is '84.

15 Q. What product do you use?

16 A. Skoal.

17 Q. And I think you told us you have been using
18 it for some years?

19 A. 20, 21, 22, I guess, 21, 22.

20 Q. What age person is it you are trying to
21 attract when you either sample or use your product?

22 A. Well, the demographics of our market are 18,
23 they used to be 18 to 35, now it is 18 to 49, I
24 think. Thank god I could still use it eight more
25 years.

1 Q. All right. And is it primarily a male
2 market you try for?

3 A. Yes.

4 Q. Do you particularly involve people who
5 otherwise use tobacco?

6 A. Pardon me?

7 Q. Do you particularly attempt to sample people
8 who otherwise use tobacco?

9 A. Oh, yes, I mean smokers would be the very
10 first ones you would try to -- people that use, I
11 mean the easiest people to get to using our products
12 are people that use tobacco in some form or another
13 already. And I mean there's more smokers out there
14 than there is anybody, so that would be the prime
15 target for a smokeless tobacco company, would be to
16 try to get smokers to switch.

17 Q. All right. You heard some testimony here by
18 a fellow named Zotas?

19 A. Yes.

20 Q. Did you hear from him, were you sitting
21 here?

22 A. Yes, John?

23 Q. Yes. Did you know him before today?

24 A. I met him once, once or twice, as he said
25 down there in Padre Island.

1 Q. Just tell the Court and jury, if you will,
2 what you know about the Zotas incident.

3 MS. DESCHAMPS-BRALY: Object, Your Honor, it
4 is outside the scope of direct. If I may have a
5 continuing objection, then I won't interrupt.

6 THE COURT: What do you say, Mr. Coats?

7 MR. COATS: Well, Your Honor, it's evidence
8 that came in their case, he's responding to.

9 THE COURT: Well, it will come in now or
10 later, so I will go ahead -- I will overrule the
11 objection, go ahead.

12 A. It was brought to my attention by our
13 assistant division manager at that time I think he
14 was assistant -- Larry Glass, who works that part of
15 Texas. He called me, and he said Pete Zotas, I think
16 is the boy's name, he says, he's got a problem; he's
17 got lip cancer, you need to come down here.

18 Well, I was planning on going to Padre
19 Island, anyway. Randy White was down there at that
20 time, he was leaving, I was supposed to come in for
21 the last weekend. So I went down there. But before
22 I did, I called San Angelo, that's where Pete Zotas
23 is from, I think. I called a dentist out there,
24 because he said that he had talked to a dentist or
25 Larry had talked. This is all second-hand

1 information that I am getting from our division
2 manager.

3 I called this dentist in San Angelo, he said
4 I hadn't seen Pete Zotas in six months, seven months.

5 I said, did you tell him he had anything
6 wrong with his mouth? He said, no. I said no
7 cancer, nothing? He said I wouldn't do that, unless
8 I did a biopsy. He said I haven't done a biopsy on
9 the boy. I don't -- you know, I haven't seen him in
10 six to eight months. I said okay. Fine. So I went
11 down to Padre Island. And it took a couple of days
12 to locate Pete Zotas, he was running around
13 somewhere, I talked to his brother one day, and
14 finally got a chance to meet with Pete late one night
15 at the hotel where we were staying. And there was
16 also some rumors that his girlfriend was pregnant and
17 that was one of the reasons he had said that to his
18 folks to kind of take the heat off of the other
19 thing. But that's not confirmed or anything. I just
20 -- I did ask John if his brother had married that
21 girl he had pregnant. And he said no, he got rid of
22 her, but he had him another one now.

23 Q. Well, what I mean to get to --

24 A. That's probably off the subject.

25 Q. That is off the subject with you, Mr.

1 Garrison. What did he say, you know, he indicated
2 you had some conference or conversation in which you
3 indicated you wanted to keep it under wraps or
4 something of that nature?

5 A. Yes, I don't understand that, there was
6 nothing to keep under wraps. I had already talked to
7 his dentist, I finally talked to Pete and I told him,
8 I said, if you got any problems, I said U.S. Tobacco
9 has got one of the greatest dental plans that I know
10 of, I said we will be glad to send you to any doctor
11 you want to go to to get a second opinion. And he
12 said, no, he said there wasn't anything wrong with
13 his mouth.

14 Q. Did he show you anything in his mouth or say
15 anything was wrong with his mouth when you talked to
16 him?

17 A. No, sir. Not that I -- I mean not that I
18 can remember. I mean you are talking a
19 year-and-a-half ago, two years ago.

20 Q. All right. Specifically, you heard John
21 Zotas say that you tried to keep it under wraps, told
22 him to keep it under wraps, in the family or
23 something like that, did you say something like that?

24 A. I didn't say that. I think John finally
25 said when he was here that Larry Glass said that and

1 not me. I am not sure what the testimony is, but --

2 Q. All right. Now, over the years, you folks
3 have used, there have been some athletes we have seen
4 tapes on involved in advertising the product. You
5 know that's a fact, and you recall seeing those
6 tapes, I guess.

7 A. Yes.

8 Q. Who all did you use?

9 A. Carlton Fisk, Bobby Murcer, Earl Campbell.

10 Q. Can you fix those in times when you used
11 Carlton Fisk?

12 THE COURT: Excuse me, Mr. Coats, are you
13 going to be a while.

14 MR. COATS: Yes, sir, a little longer.

15 THE COURT: Let's take our noon recess, it
16 is 12 o'clock. Let's recess until 1:15, with my
17 usual admonitions to you.

18 Everyone remain seated until the jury exits
19 at 1:15.

20 Court will be in recess.

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